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October 1, 2002

Hon. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. S.W.
Suite TW-A325
Washington, D.C. 20554

Dear Ms. Dortch:

RE: Review of the Commission's Broadcast and
Cable Equal Employment Opportunity Rules and
Policies, MM Docket No. 98-204

On behalf of forty-eight organizations that generally support the Commission's proposals in this proceeding, we respectfully present this omnibus response to new assertions contained in reply comments, in testimony presented in the Commission's June 24, 2002 en banc hearing, and in several subsequent ex parte letters.

A response is necessary in light of new arguments and theories put into the record by the Named State Broadcasters Associations ("STBAs") and the National Association of Broadcasters ("NAB"). These arguments and theories extend far beyond the requirements or implications of Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344, 353, rehearing denied, 154 F.3d 487, rehearing en banc denied, 154 F.3d 494 (D.C. Cir. 1998) ("Lutheran Church") or MD/DC/DE Broadcasters Ass'n. v. FCC, MD/DC/DE Broadcasters Association v. FCC, 236 F.3d 13, petition for rehearing and rehearing en banc denied, 253 F.3d 732 (D.C. Cir. 2001), cert. denied sub nom. MMTc v. FCC, 122 S.Ct. 920 (2002) ("MD/DC/DE Broadcasters").

This letter will not respond to those allegations in reply comments and subsequent filings that are already addressed in our initial comments. Instead, we focus herein only on these issues:

1. Which of the leading EEO proposals in this proceeding is the most reasonable. 1/
2. Whether there is evidence of discrimination in broadcasting and cable. 2/ In particular, we present almost irrefutable evidence that large broadcast and cable companies discriminate, as follows:

Cable and Other Pay TV Services: 19% discriminate against women, 36% discriminate against African Americans, and 20% discriminate against Hispanics.

Radio and TV Broadcasters: 15% discriminate against women, 20% discriminate against African Americans, and 24% discriminate against Hispanics.
3. Whether, after the EEO rules were suspended after Lutheran Church, many broadcasters abandoned systematic efforts to ensure equal opportunity. 3/
4. Whether broad recruitment efforts are useful. 4/
5. Whether broadcast hiring is an "insular process." 5/
6. Whether the question of how to use Form 395 should be addressed in this proceeding, and, if it is, whether there is any basis for terminating its use or limiting its usefulness. 6/
7. Whether petitioners to deny commonly, or even occasionally, bring EEO litigation that is without foundation, or that somehow induces "reverse discrimination", or that is improperly motivated or conducted. 7/

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- 1/ See p. 3 infra.
2/ See p. 5 infra.
3/ See p. 18 infra.
4/ See p. 23 infra.
5/ See p. 24 infra.
6/ See p. 27 infra.
7/ See p. 32 infra.

The materials to which we respond are the National Association of Broadcasters Reply Comments, filed May 29, 2002 ("NAB Reply Comments"); the Named State Broadcasters Associations Reply Comments, filed May 29, 2002 ("STBAs Reply Comments"); the "NAB EEO Views and Proposal," dated July 23, 2002 (appended to notices of ex parte communication filed July 24, 2002 (meeting with Catherine Bohigan, Stacy Robinson, Roy Stewart, Mary Beth Murphy, Jamila Bess-Johnson, Lewis Pulley and Roy Boyce), August 7, 2002 (meeting with Susan Eid and Jordan Goldstein), and August 26, 2002 (meeting with Jane Mago, Michele Ellison, Joel Kaufman, Marilyn Sonn and Louis Peraertz) ("NAB EEO Views"); and the NAB ex parte letter to Hon. Marlene Dortch, August 13, 2002 ("NAB August 13 Letter"). Page references to the transcript of the Commission's June 24, 2002 en banc EEO hearing are given as "Tr."

The STBAs and NAB take the inconsistent positions that (1) there is no discrimination, but (2) in case there is, the Commission should make it impossible for listeners and viewers ever to prove it. We maintain that it is not a proper purpose of government to help regulatees conceal and evade responsibility for unlawful behavior.

1. **The EEO Supporters' Proposal Is The Most Effective One Introduced In This Proceeding**

On August 1, 2002, in a Notice of Ex Parte Communication, counsel for the STBAs provided a draft of a new rule based on the STBAs' proposals. 8/ A side-by-side comparison of STBAs' proposal, the NAB's proposal, and other EEO regulatory paradigms over the years is provided in the table on p. 4 infra.

8/ See MMTC "Motion for Procedural Relief", filed January 29, 2002, urging, inter alia, that the Commission "place in the docket a draft of the language of the proposed rules." One issue on which we agree with the STBAs is that it would have been preferable for the Commission to include draft language of a proposed rule in its NPRM. Nonetheless, we also recognize that an agency is free to adopt a rule without first issuing formal draft rule language, as long as the parties have reasonable notice of the range of alternatives that the agency might adopt.

COMPARISON OF EEO REGULATORY PARADIGMS

<u>Attribute</u>	<u>1971-1998 EEO Rules</u>	<u>2000 EEO Rules</u>	<u>STBAs Proposal</u>	<u>NAB Proposal</u>	<u>EEO Suprts. Proposal</u>
Bans intentional discrimination	Yes	Yes	Yes	Yes	Yes
Acknowledges present effects of past discrimination	Yes	Silent on this question	No	No	Yes
Acknowledges that discrimination still exists	Yes	Yes	No	No	Yes
Acknowledges need to prevent discrimination	Yes	Yes	No	No	Yes
Recruitment expected for all vacancies	Yes, after 1976	Yes	Only 50% of all vacancies	None required	Yes
Broad outreach, to build applicant pool and attract newcomers to the industry, is expected	No	Yes	No	Yes (but can be avoided)	Yes
Employment statistics would be available in intentional discrimination cases	Yes	Yes	No	No	Yes
Public is afforded an opportunity to prove intentional discrimination	Seldom	Untested	Unclear	Unclear	Seldom
Employment statistics would be available to assess the reasonableness of recruitment	Yes, in theory	No	No	No	No
Public can meaningfully assess whether recruitment was reasonable (without using employment statistics)	Seldom	Seldom	No	No	Seldom
"Small station" exemption	No	No	No	Yes	No

2. **There Is Overwhelming Evidence Of
Continuing Discrimination In Broadcasting**

The STBAs have stepped with both feet into the realm of historical revisionism and discrimination denial:

The broadcast industry today is engaging in widespread, non-discriminatory, vigorous, voluntary efforts to make opportunity available to all who have the desire, talent and perseverance needed for a successful broadcast career...neither the Commission nor [civil rights organizations] have produced, nor can they produce, any evidence of widespread discrimination in the broadcast industry today or in the recent past that would require special regulation and remedies to be imposed today. 9/

Apparently it was not enough for the STBAs to announce that we cannot "produce evidence of widespread discrimination in the broadcast industry[.]" 10/ The STBAs have gone even further, attempting to make such proof by the customary means -- scientific evidence -- impossible and unavailable. They declare that the Commission cannot consider industrywide statistics in deciding whether regulation is appropriate because "any attempt to establish a target level of representation for any group within society would amount to a quota system that would again entangle the Commission in precisely the same equal protection defects that led [to] Lutheran Church." 11/

The Commission has not proposed to "establish a target level of representation" industrywide, much less for each station. Instead, it simply proposes to look at the representation of minorities and women throughout the industry in an effort to determine whether regulation aimed at eliminating the present effects of past discrimination is warranted. 12/

9/ STBAs Reply Comments, p. 8 (emphasis in original).

10/ Id.

11/ STBAs Reply Comments, p. 14.

12/ Review of the Commission's Broadcast and Cable Equal
Employment Opportunity Rules and Policies (Second NPRM),
16 FCC Rcd 22843, 22858 ¶50 (2001).

Further, there is no other way, besides using racial statistics, that the government can determine whether race discrimination has ended. 13/ The Commission can hardly send broadcasters a questionnaire that asks "how many times have you discriminated in the past year" and expect honest answers. 14/ Recognizing the necessity of using statistics to estimate the prevalence of discrimination, the Supreme Court has repeatedly endorsed this kind of industrywide analysis, which arises in cases as diverse as voting rights 15/ and jury composition. 16/ The appropriateness of using racial statistics has never arisen in equal employment litigation because -- until the 1999 FCC EEO rulemaking proceeding and this proceeding -- no party in any tribunal has ever advocated the repeal of a law or regulation

13/ For example, the NAB used EEO-1 data to make the point that the broadcasting industry does not need EEO regulation. See NAB Reply Comments, pp. 9-10, discussed at p. 8 infra. Although the NAB misinterpreted these statistics, the NAB's use of them was fair advocacy and it does not drag the Commission down the path toward a "quota system."

14/ With their licenses on the line, all broadcasters will surely state that they do not discriminate -- just as all broadcasters have always certified on Form 396 that they do not discriminate. But broadcasters are human beings, and not all human beings tell the truth all the time. Some idea of the propensity of broadcasters to misstate key business facts is given in a recent report in TV Business Confidential, which observes that "[m]edia buyers maintain that a significant number of ads -- especially for local media like spot TV, radio and cable, are either run incorrectly or not run at all." "Trust, but Verify," TV Business Confidential, June 20, 2002, p. 1 (quoting Jon Mandel, co-managing director and chief investment officer at Grey's MediaCom unit, who states that "[t]he conservative estimate is about 5%, but it's probably more than like 20% or 30%.")

15/ See, e.g., Gomillion v. Lightfoot, 364 U.S. 339 (1960) (holding that a change in city boundaries from a square to a 28-sided figure, which excluded 99% of the Black voters and no White voter, constituted racial discrimination violative of the 15th Amendment).

16/ See, e.g., Batson v. Kentucky, 476 U.S. 79 (1986) (taking account of the race of jury venire members in order to hold that race-based peremptory challenges in a criminal petit jury might in some circumstances violate the equal protection clause).

designed to prevent race and gender discrimination in employment. 17/ America's nonminority broadcast trade organizations are the only organizations in the nation seeking to turn the civil rights clock back in this manner.

For its part, the NAB made the startling allegation that "the Commission has admitted that no pattern of discrimination exists in the broadcasting industry." 18/ The NAB's syllogism is:

17/ In this regard, it is useful to consider the position taken by the prominent conservative opponent of affirmative action, U.C. Berkeley Professor John McWhorter, in opposing the so-called "Racial Statistics Privacy Act", a ballot initiative being promoted by Ward Connerly. This proposed law -- much like the proposal of the STBAs in this proceeding -- would prevent the government (the State of California) from using racial statistics even to fight race discrimination -- although the Racial Statistics Privacy Act would allow the use of these statistics by police for "racial profiling." Dr. McWhorter points out that conservatives "need the statistics to help make the case that [affirmative action measures] are not necessary for there to be a representative number of black students at good universities." "The Conservative Professor Who Opposes Ward Connerly's Racial Privacy Policy," Journal of Blacks in Higher Education, Summer, 2002, p. 49. Columbia University Law Professor Patricia J. Williams accurately points out that Connerly's ballot initiative "is not about 'privacy' as most laypeople think of it. It is actually about privatizing racially based behavior [by] [e]liminating official knowledge of race and ethnicity in the public sphere." Patricia J. Williams, "Racial Privacy," The Nation, June 17, 2002, p. 9.

18/ NAB Reply Comments, p. 8 n. 24 (emphasis supplied).

- a. If the Commission finds discrimination, it cannot grant a license renewal (a true fact; see 47 U.S.C. §309(k)).
- b. The Commission seldom denies license renewal applications (another true fact).
- c. It follows that there must be no discrimination in the industry. 19/

The NAB's syllogism is illogical. The correct conclusion from the premises given would be that the Commission has found no discrimination -- not that there was none. Of course the Commission -- with no EEO field staff and virtually no EEO investigatory powers -- seldom uncovers discrimination. Most discrimination is hidden, and it is easy to hide. Certainly there are powerful incentives to hide it from the Commission, 20/ and there are even more powerful incentives for discrimination victims to grit their teeth and avoid the retaliation and expense that befalls those filing discrimination complaints -- complaints the FCC routinely sends to the EEOC, where they face a backlog of up to seven years. 21/ Thus, the only cases in which the Commission has been able to designate for hearing have been those where the broadcaster has been both dishonest and careless enough to misrepresent its EEO efforts, causing the FCC to infer the presence of intentional discrimination. 22/

The NAB also points to statistics showing that in 2000, among broadcasters large enough to file Form EEO-1, "minorities and women were 22.5% and 41.5% of the reporting broadcasting companies' workforce, respectively." 23/ The NAB asserts that "[w]hile these figures may not suit the tastes of MMTC, NOW and certain other commenters, NAB believes it is undeniable that an industry workforce consisting of almost one-quarter minorities, and more than 40% women is far from 'homogeneous.'" 24/

19/ Id.

20/ See Comments of EEO Supporters (filed April 15, 2002), ("EEO Supporters Comments"), pp. 44-45.

21/ Id., pp. 43-44. As Justice O'Connor has pointed out, "[v]ictims of discrimination want jobs, not lawsuits." EEOC v. Ford Motor Co., 458 U.S. 210, 230 (1982).

22/ See, e.g., EEO Supporters Comments, p. 121 n. 256 and cases cited therein.

23/ NAB Reply Comments, pp. 9-10.

24/ Id.

We give the NAB credit for recognizing that statistical evidence can be quite useful in illuminating whether or not discrimination may be present. 25/ Nonetheless, the NAB has misinterpreted the data. The statistics it cites are aggregate numbers that include secretarial and janitorial jobs. As we have noted, industrywide EEO data shows race and gender disparities that are so substantial that discrimination must be inferred to be a material cause. 26/

The NAB further attributes the "relatively low proportion of management positions in broadcasting" held by minorities to "the fact that broad advancement of minorities in any industry necessarily depends on the expansion of educational and entry-level professional opportunities that unfortunately began in earnest too few decades ago. It simply takes some period of time before any industry, including broadcasting, can produce a breadth and depth of executives of a particular ethnicity, and that is the process the industry is undergoing right now." 27/

Actually, that "period of time" expired about 20 years ago. The educational institutions are a full generation ahead of the broadcasting industry in opening their doors to all. Virtually every school of broadcasting was fully integrated at some point between the mid-1970s and mid-1980s, and by 1990 most of the Historically Black Colleges and Universities' (HBCUs) broadcasting departments had been in operation for at least fifteen years. 28/ Rising through the executive ranks in television and radio seldom takes more than 10 years or so -- sometimes less. What, then, explains minorities' continued absence from those ranks except the continuation of discrimination?

25/ Acknowledging that the national workforce in 2000 was 29.2% minority and 47.1% women, the NAB "concedes" that these statistics reveal "a slight gap" from the broadcast industry's figures of 22.5% and 41.5% respectively. Id. Actually, these disparities are far from "slight", and are overwhelmingly statistically significant, when spread out over thousands of employees.

26/ See, e.g., EEO Supporters Comments, pp. 37-40 and 47-49 (citing anecdotal and statistical evidence).

27/ NAB Reply Comments at 12.

28/ On October 17, 2002, Howard University's School of Communications will celebrate its 30th anniversary.

In 2000, women were 41.5% of EEO-1-filing broadcasters' employees, but only 17.6% of technicians. 29/ The NAB contends that the paucity of women in engineering "may simply be due to social circumstances, and not discriminatory hiring practices[.]" NAB Reply Comments, p. 12. 30/ But that same argument was used for years to explain the paucity of minority engineers -- a disparity that actually has largely been cured over time. Further, what possible "societal" factors explain why minorities work extensively in sales positions in nonbroadcast fields, but not in broadcasting? 31/

The fact is that thirty-eight years after Title VII, and thirty-three years after the EEO Rule was first adopted, employment patterns in broadcasting continue to display gross disparities by race and gender. For decades, minorities and women have been trained, ready, willing and able to do every job in broadcasting. Further, for decades the industry's job turnover rate has been on the order of 25-50% per year. Consequently, if the statistical disparities are not attributable to discrimination, what could explain these lingering and substantial disparities?

In its effort to deny that discrimination still exists, the NAB has even gone so far as to contend that "[e]ven witnesses at the *en banc* hearing in support of the Commission's EEO proposal did not assert any barriers to entry of women and minorities into the broadcasting industry." 32/ That assertion is especially discomfiting, since the testimony of the witnesses themselves shows otherwise. For example:

29/ See EEOC, 2000 EEO-1 Aggregate Report, SIC 483: Radio and Television Broadcasting (supplied as Exhibit 1 to EEO Supporters Comments, and discussed therein on p. 48, n. 116).

30/ What, exactly, are the "social circumstances" that keep women from broadcast engineering careers? Is it, in the former words of Barbie, that "math is hard?" What, specifically, explains why women have recently made great strides in broadcast sales but are virtually shut out of broadcast engineering?

31/ See EEOC, 2000 EEO-1 Aggregate Report, SIC 483: Radio and Television Broadcasting (supplied as Exhibit 1 to EEO Supporters Comments, and discussed therein on p. 48, n. 116) (in 2002, minorities were 22.5% of the reporting companies' employees in all positions, including clerical, laborer and service workers, but were only 15.7% of the sales workers).

32/ NAB EEO Views.

Hugh Price: [F]rom 1982 to 1988 I was a senior executive in public broadcasting with Channel 13 in New York City....As an executive, I saw up close that this is indeed a worth of mouth industry and that people who make critical hiring decisions tend to want to rely upon known quantities are more resistant to opening it up to those who are unfamiliar than we need. 33/

Joan Gerberding: Even the newest media conglomerates seem to be reflecting old boy attitudes in their executive suites. Women are rarely represented among the top executives or on their boards of directors....AWRT [American Women in Radio and Television], whose mission is to advance the impact of women in the electronic media, is very concerned that the perpetual glass ceiling in the broadcasting industry has had too few cracks in recent years....It has taken the broadcast industry way too long to break out of the bad habits of the old boys' network and the word of mouth recruitment that have limited opportunities for advancement by well qualified women." 34/

Cathy Hughes: My career in broadcasting has been the exception to the rule, not because I am exceptional, but because the Federal Communications Commission pried open the window of opportunity that afforded me an equal chance to prove my worth in value to the broadcasting community. It is painfully evident that other members of my gender and my ethnic group have not been afforded the same opportunity, and I am obligated to do everything in my power to correct this disparity....Too much time and energy and money has been spent fighting EEO, and yet so little has been spent in an effort to correct the discriminatory practices that limit our collective potential and safeguard our future. 35/

Charles Warfield: [T]oo many companies disregard their obligations to provide equal opportunity. I'm not talking about intentional discrimination, although there's no question that there is a lot of that. I'm talking about broadcast stations that simply do the bare minimum or nothing at all to show that they care at all about bringing persons historically excluded from our profession into the fold. 36/

33/ Testimony of Hugh Price, President, National Urban League, Tr. 24.

34/ Testimony of Joan Gerberding, President, American Women in Radio and Television, Tr. 27, 30.

35/ Testimony of Cathy Hughes, Tr. 79, 83.

36/ Testimony of Charles Warfield, Tr. 101.

Finally, we note that in our Comments, we said that we knew there was discrimination, but did not know how much there was; consequently, we conservatively presumed that the percentage of discrimination by broadcasters at 10% -- half of the percentage found by scholarly research in other industries. We pointed out that even if only 10% of broadcasters discriminated, a job applicant is 50% likely to encounter discrimination by filing just seven job applications, and 80% likely to encounter discrimination by filing just 21 applications. 37/ We further noted, however, that even only one percent of broadcasters discriminating would represent 150 stations and hundreds of foregone job opportunities. 38/ As the UCC's Rev. Robert Chase asked at the en banc hearing,

Would the IRS tolerate 150 tax cheats among 15,000 businesses? Would a town of 15,000 tolerate 150 drunk drivers or looters or polluters....Reports of unremedied discrimination are sure to frighten impressionable college freshmen away from broadcast majors and into other pursuits. It would hardly be reassuring to them to learn that only 150 broadcasters discriminate." 39/

We now acknowledge that our 10% estimate was wrong -- indeed, it was a vast understatement. The actual numbers for 1999, with respect to large broadcast and cable employers (those who filed EEO-1 forms), have been released. They are provided in a massive study, The Reality of Intentional Job Discrimination in Metropolitan America - 1999, by Alfred W. Blumrosen and Ruth G. Blumrosen (Rutgers University, 2002) (the "Blumrosens Study"). Excerpts are attached to this letter as Exhibit 1. The entire study can be found at www.eeol.com. 40/

37/ See EEO Supporters Comments, p. 21.

38/ Id. Suffice it to say that no broadcaster would regard an FCC rule that deprives it of one percent of its revenues as de minimis. Such rules are fought bitterly every day.

39/ Testimony of Rev. Robert Chase, Executive Director, Office of Communication Inc., United Church of Christ, Tr. 96.

40/ The study, three years in the making, was supported by a grant from the Ford Foundation to Rutgers University. The Blumrosens are generally regarded as the deans of modern equal employment law, having written on virtually every subject in EEO jurisprudence and having litigated many of the landmark employment discrimination decisions of the past two generations.

[n. 40 continued on p. 13]

Certainly these statistics are an improvement over the nearly 100% of firms that discriminated intentionally against minorities and women before the FCC adopted its EEO rules. But they should shock and appall every fair-minded broadcaster and cable operator -- especially since these figures apply to the largest firms and do not even include any firm with fewer than 50 employees -- i.e., most of the radio industry. 43/

The Blumrosens Study represents the first systematic national analysis of EEO-1 data, using the time-tested statistical paradigm long accepted by the courts for statistical proof of systemic discrimination.

43/ Our Comments gave the formula for determining the probability that a job applicant, who randomly sends several applications to a large population of employers, will encounter discrimination, depending on the percentage of firms in the industry that discriminate. EEO Supporters Comments, pp. 20-21. Specifically, we reported that if just 10% of employers discriminate, and "the job applicant files just seven applications, there is at least a 50% chance that at least one of the applications has landed on the desk of a discriminator. If she files just fifteen applications, there is at least an 80% chance that at least one of the applications has landed on the desk of a discriminator." Id., p. 21 (emphasis in original). We also noted that if 20% of employers discriminate (as turns out approximately to be the case for cable against women and Hispanics and for broadcasting against African Americans, "if the job applicant files just three applications, there is at least a 50% chance that at least one of the applications has landed on the desk of a discriminator. If she files just seven applications, there is at least an 80% chance that at least one of the applications has landed on the desk of a discriminator." Id., p. 21 n. 71. Further, at the 24% rate at which the Blumrosens Study found that broadcasters discriminate against Hispanics, we calculate that if the job applicant files just three applications, there is at least a 56% chance that at least one of the applications has landed on the desk of a discriminator; and if she files just seven applications, there is at least an 85% chance that at least one of the applications has landed on the desk of a discriminator. Finally, at the 36% rate at which the Blumrosens Study found that cable companies discriminate against African Americans, we calculate that if the job applicant files just three applications, there is at least a 74% chance that at least one of the applications has landed on the desk of a discriminator; and if she files just seven applications, there is at least an 96% chance that at least one of the applications has landed on the desk of a discriminator.

For the cable and broadcast industries, the Blumrosens found as follows:

Cable and Other Pay TV Services: 19% discriminate intentionally against women, 36% discriminate intentionally against African Americans, and 20% discriminate intentionally against Hispanics. 41/

Radio and TV Broadcasters: 15% discriminate intentionally against women, 20% discriminate intentionally against African Americans, and 24% discriminate intentionally against Hispanics. 42/

40/ [continued from p. 12]

Alfred Blumrosen is the Thomas Cowan Professor of Law at Rutgers, where he has taught since 1955. Among his many achievements are his service, beginning in 1965, in assisting with organizing the EEOC and his service as its first Chief of Conciliations and Director of Federal-State Relations. He has also served as a Special Attorney in the Civil Rights Division of the U.S. Department of Justice, as a Consultant to Assistant Secretary of Labor Arthur Fletcher (1969-1971), and as the EEOC's consultant concerning Guidelines on Employee Selection Procedures (1977-1979).

Ruth Blumrosen, Adjunct Professor of Law at Rutgers, also assisted in the establishment of the EEOC in 1965, where she was Acting Director of Compliance. Among her many accomplishments were her service as consultant to the EEOC concerning guidelines under the Equal Pay Act and wage discrimination issues (1979-1980), and her victory in the case that established the federal constitutionality of state fair housing laws.

41/ Blumrosens Study, p. 204. The total numbers of affected workers were 1,366 women, 2,536 African Americans and 658 Hispanics -- a total of 4,559 people. Id.

42/ Id., p. 205. The total numbers of affected workers were 1,340 women, 940 African Americans and 1,131 Hispanics, for a total of 3,411 people. Id.

The Blumrosens Study examined the 1999 EEO-1 data for thousands of employers. The study ascertained, for dozens of industries, the percentage of EEO-1 reporting firms that are presumed under the law to be engaging in intentional discrimination against women, African Americans or Hispanics. As the Blumrosens explain:

Workers affected by this discrimination were measured by the difference between the number actually employed and the number that the apparent discriminator would have employed if it had employed minorities/women at the average. This is the standard the Supreme Court has applied in cases of intentional discrimination. There is no single average in the study. For each occupation in each establishment, the average utilization varies depending on the number of qualified available workers in the labor market, industry and occupation. The average is not a quota - it is a fact, showing how similar employers have employed minorities and women in the same occupation under the same labor market and industrial circumstances.

The study addresses some of the most common employer explanations for such low levels of minority and female employment, such as women aren't interested in the work, [they are doing the same work for other similar employers]; no qualified workers were available [qualified workers were available because they were doing the same type of work for other employers.] 44/

The methodology of the study was foreshadowed by Justice O'Connor's opinion in EEOC v. Shell Oil, in which she noted that it is "only in a comparison" between an employer's EEO-1 data and those of other, similarly situated employers "that a pattern of discrimination becomes apparent." 45/

44/ Blumrosens Study, p. xiv.

45/ EEOC v. Shell Oil, 466 U.S. 54, 72 (1984) ("Shell Oil") (Burger, Rehnquist and Powell joining in the opinion).

The standard used in the study is the "presumption that intentional discrimination is present when an establishment is more than two standard deviations below the average among its peers...an evidentiary principle designed by the Supreme Court to flush out 'clandestine and covert' intentional racial discrimination against minorities." 46/ At this two standard deviation level, "there is less than once chance in twenty (5%) that it would have occurred by chance." 47/

As shocking as the Blumrosens' data are, the actual percentage of firms that discriminate is likely to be considerably greater than the percentages found in the Blumrosens Study:

Our data cannot particularize the myriad discriminatory practices and events that take place beyond the view of our computer screen and contribute to the restriction on opportunity reflected in the statistics. These acts may include discriminatory recruiting and hiring practices, job assignment patterns, limitations on promotional and training opportunities, layoff and discharge practices, creating a hostile work environment, denying equal pay to minorities or women, or resisting employment of minorities or women in certain occupations by an entire industry or labor market. Nor can we "see" discrimination that takes place outside of Metropolitan Areas, or by employers of 50 or fewer workers. In addition, we require that an establishment have at least 20 employees in an occupational category to consider it in connection with that category. Many smaller establishments will not have 20 employees in any single occupational category, and will not be considered in connection with that category.

Since the majority of the work force is employed by employers who are not "visible" to our study and since discriminatory patterns appear to be similar among different sized

46/ Id., p. 35, discussing Teamsters v. U.S., 431 U.S. 324, 335 n. 15 (1977). Additional authorities are provided in the Blumrosens Study, p. 228 n. 169.

47/ Blumrosens Study, p. 43. Actually, "90% of the discriminating establishments were at least 2.5 standard deviations below the average utilization by their peers. This means that there were no more than one in 100 chances that the result was accidental." Id., p. 63.

employers...we have reason to believe that the extent of intentional job discrimination may be at least double that which we have observed. 48/

While the Blumrosen Study does not pinpoint which specific broadcasters or cable companies discriminate, it does show that in 19% to 36% of the reporting units, the disparity between minority and female representation of qualified persons, and their actual employment in these positions in the reporting unit, is so extreme that the federal courts would presume that intentional discrimination is the cause.

The study was necessary because, as we have pointed out in detail, discrimination is generally hidden from view. 49/ This kind of systemic statistical analysis is the only way to quantify the extent of discrimination in an industry.

The Blumrosens Study should put to rest the question of whether there is "sufficient" discrimination to justify a rule to prevent discrimination. Even if the Blumrosens' math were off by a factor of ten, the extent of discrimination would still shock the conscience.

No one but God can determine with absolute precision how much of the deep underutilization of minorities and women in broadcasting and cable is attributable to present-day discrimination. Further, the evidentiary burden needed to prove that a specific company discriminated is high. However, the test for concluding that a substantial part of present-day minority and female underutilization is caused by present-day discrimination is "rational basis." In light of the Blumrosens Study, it is absurd to maintain that present-time discrimination is not a very substantial contributing cause of minority and female underutilization in broadcasting and cable. We sincerely hope that the STBAs and the NAB will review the Blumrosens Study, acknowledge that they were terribly wrong, and join us in our efforts to stamp out discrimination in their industries.

48/ Blumrosens Study, p. 12. In addition to requiring that an employer have at least 20 employees in the occupational category examined, they required "that there be two other establishments with at least 20 employees in that occupation; that there be at least 120 employees in the occupation in the MSA; and that no establishment have more than 80% of the employees in order to have sufficient employment to assure that there was a labor market for such workers, and that no single establishment dominated the market." Id., p. 30.

49/ See EEO Supporters Comments, pp. 41-45.

3. **Many Broadcasters Abandoned Antidiscrimination
Protections After The EEO Rule Was Suspended**

As shown above, the industry has engaged in widespread discrimination. As the Commission knew when it adopted the EEO rules in 1969 and 1971, the industry discriminated relentlessly when there were no EEO rules. 50/ Should we now assume that discrimination ended because the EEO rules were suspended?

Do accidents stop happening because the city stops repairing roads and installing stop signs?

This illogic did not stop the STBAs from asserting that civil rights organizations "rely on distant history rather than current reality" in urging that continued EEO regulation is necessary. 51/ Specifically, the STBAs maintain that EEO regulations are unnecessary because the industry has not started to discriminate over the past three years. 52/ No evidence is offered for this startling assertion, -- and as discussed infra, the STBAs and the NAB want to eliminate, or restrict access to, the very data that could illuminate this question. 53/

50/ A horrible example was provided by the renowned San Francisco television anchor, Belva Davis, at the June 24, 2002 en banc hearing. In 1965, a year after Title VII was enacted, Ms. Davis "applied for an open position at the ABC O&O in San Francisco where civil rights leaders had been pressuring them to hire a person of color. I finally got my interview with the manager...who at the time was a very nice man, very friendly. I waited more than two hours, though, to see him, and I knew I was in trouble. At the end of my short time he said to me I want to thank you very much, but we are not hiring negresses yet. If we ever do, I will certainly keep you in mind." Testimony of Belva Davis, Tr. 86-87.

51/ STBAs Reply Comments, p. 6. To be sure, there has been some progress, but it is far too early to declare victory. As the Blumrosens point out, "[o]ne reality reflected in the EEO-1 data is the improvement in opportunities for minorities and women since the sixties when they were cramped into a limited range of jobs and denied opportunities to develop and demonstrate their abilities and earn appropriate compensation. This reality may have influenced the erroneous impressions of all groups concerning the proportions of minorities in the country, and their position in the job market." Blumrosens Study, p. 20.

52/ Id.

53/ See discussion at pp. 27-32 infra.

Furthermore, the STBAs, who profess not to like "pressure" by those fighting discrimination, threaten to seek "statutory or constitutional scrutiny and rejection" if meaningful EEO rules are restored. 54/

This stance is at least puzzling. If the STBAs are so supremely confident there is no longer any discrimination, they should have no reason to fear citizens who bring discrimination allegations to the Commission. Following their logic, no such case would have any merit anyway, so no such litigant could ever prevail. Yet they are fighting as though their lives depend on it to prevent anyone from having evidence that could be used in support of a discrimination case. 55/

This is how Texas Association of Broadcasters (TAB) Executive Director Ann Arnold articulates the STBAs' position:

The broadcast industry lived three decades under FCC administered nondiscrimination and affirmative action rules. For all practical purposes, those affirmative action or broad outreach rules have been off the books for three years now without any evidence of radio and television stations acting to curtail equal employment opportunity for all or to discriminate against any minorities. The broadcast industry continues to reach out for qualified employees from the entire population. Outreach efforts have in essence become institutionalized, and we question why anyone would assert that there is any true need for any industry wide re-regulation in this area. 56/

Similarly, the NAB asserts that the "EEO rules have been in effect for more than 30 years. Absent any evidence to the contrary, these policies must be presumed to have been successful[.]" 57/

It would certainly be delightful if a regulation could be "presumed" to be successful simply because it has been in effect for three decades. Sometimes, even less time is required. Bus segregation and airline segregation were prohibited in 1955 and 1956 respectively, and these practices were virtually stamped out

54/ Id., p. 7.

55/ See STBAs Reply Comments, p. 29 (continuing to argue that Form 395 data should not be made available to the public, which might use it to file discrimination cases.)

56/ Testimony of Ann Arnold, Executive Director, Texas Association of Broadcasters, Tr. 41.

57/ NAB Reply Comments, p. 18.

in a matter of months. However, we have had laws against employment and housing discrimination for nearly four decades; we have had laws against drug importation and use for thirteen decades; we have had laws against speeding for nine decades; and we (and the English) have had laws against homicide for 94 decades. These laws have been (per Jimmy Carter's famous phrase) at best an "incomplete success" in eliminating the harms they seek to cure. Certainly the Commission's EEO rules would be more successful if the broadcast industries' trade organizations would fight -- as the NCTA has -- for enforceable rules and for strong enforcement of those rules.

To be sure, many broadcast companies and cable companies continued to practice broad recruitment even when they were no longer required to do so. Among broadcasters, for example, it is the policy of the CBS, UPN, NBC, ABC and Fox station groups, and of Clear Channel, Gannett, Cox, Radio One, Spanish Broadcasting System, Hispanic Broadcasting and Emmis -- and others -- to continue to use nondiscriminatory procedures and to maintain vigilance against discrimination. 58/

It is not surprising that large, successful companies observe EEO procedures even when their licenses are not at risk, and even while no one is looking. Nondiscrimination and discrimination-prevention are earmarks of a successful business. Discrimination impedes a company's competitiveness, since a discriminator is not receiving the full benefit of all sources of labor. 59/

The large broadcast companies that observe EEO procedures own fewer than half of the nation's broadcast stations. We have recently seen how many other stations misbehave. As we reported in

58/ We take this opportunity to mention one of them -- Midwest Family Broadcasters. Its Vice President, Mary Ann Kushak, was the NAB's witness at the June 24 en banc hearing. Ms. Kushak testified that "I have never witnessed or experienced discrimination against anyone." Tr. 33. Some of our colleagues have advised us that they found her testimony incredible, but we disagree. In a company that finds discrimination abhorrent, it is entirely plausible that an executive would never encounter any discrimination. Regrettably, not everyone in the industry has been as fortunate as Ms. Kushak in having enjoyed the opportunity to work in a discrimination-free environment.

59/ See EEO Supporters Comments, pp. 24-29. A recent example of how greater inclusion promotes competition is found in the effect of Title IX on sports. Ellen Goodman points out that "[s]ince the law was passed, the number of men's teams has gone up, not down. So has the number of men in intercollegiate play. More than 70 percent of the schools that added women's teams did it without cutting men's teams."

our Reply Comments, 42% of broadcast job postings on state association websites no longer include the three letters "EOE" which for four decades have served as American industry's universal signal to job-seekers that they can expect nondiscriminatory treatment by employers. 60/

We expected the STBAs to have an explanation for their own members' wholesale deletions of "EOE" tags on job notices published on the state associations' own websites -- and for so many of their own websites' failure to include an EOE statement. But the STBAs are completely silent in the face of evidence that they and almost half of their own members are "backsliding" in droves. There is no defense for the disgraceful practice of deleting EOE tags from job notices.

Broadcasters' wholesale deletion of EOE tags was hardly the only evidence of industry backsliding. Extensive evidence of industry backsliding -- and continued lack of progress that predates 1999 -- has already been provided in our Comments and Reply Comments. 61/ In addition:

The NAMIC study Minority Employment in Cable II, an update of NAMIC's 1999 study discussed in our earlier Comments, 62/ found that minority representation in management now stands at 15%, but among CEOs and members of corporate boards it is only 7%. The study found that "minorities remain underrepresented across all cable management positions" and that Hispanics are "severely underrepresented" in key management positions at 1% at MSOs and other cable companies, although they make up 12.6% of the population. 63/

60/ See EEO Supporters Reply Comments of EEO Supporters, filed May 29, 2002 ("EEO Supporters Reply Comments"), pp. 28-31.

61/ EEO Supporters Comments, pp. 47-49; EEO Supporters Reply Comments, pp. 19-35.

62/ See EEO Supporters Comments, pp. 37-38 n. 107. The 1999 NAMIC study reported, among other things, that 21% of minorities and 22% of women perceived that their race or gender, respectively, had a negative impact on opportunities at their companies. Id. In light of the Blumrosens Study (which found that 19% of cable companies discriminated against women, 36% against African Americans and 21% against Hispanics) the perceptions by women in cable were almost exactly on the mark. Minorities significantly underestimated the discrimination actually visited upon them. See p. 13 supra.

63/ See "Cable Needs More Minorities, Especially Hispanics, Study Says," Communications Daily, September 24, 2002, pp. 3-4.

The September, 2002 issue of Talkers magazine just rated the top 25 radio talk show hosts of all time, based on "talent, longevity, success, creativity, originality and impact on both the broadcasting industry and society in general." The New York Daily News reported that "the list may reinforce the image of talk radio as the land of white males, because 22 of the top 25 are males and all 25 are white." 64/

The UCLA Center for Chicano Studies report, "Ready for Prime Time: Minorities on Network Entertainment Television" found that "[d]espite the well-documented growth of racial minorities as a demographic, political, and market force within the United States, this population enters the twenty-first century with a lower level of media access and representation than since the civil rights era." 65/ The study documents the continued and abysmally low representation of minorities as television actors, directors, writers and network executives. A copy of the study is provided as Exhibit 2 to this letter.

The RTNDA's 2002 Women and Minorities Survey showed that while the representation of women and minorities among TV news directors is increasing, the representation of minorities in the TV news workforce slid back from 24.6% last year to 20.6%. 66/ The study, with accompanying commentary, is provided as Exhibit 3 to this letter.

A study by the Most Influential Women in Radio ("MIW"), released August 7, 2002, found that opportunities for women in radio are "still far below the management opportunities for men." In particular, the representation of women among general managers has not increased from last year, and the percentage of stations with female general sales managers has actually decreased during this past year. 67/

64/ David Hinckley, "Who's Tops in Talk," New York Daily News (reprinted in Shoptalk, September 20, 2002, p. 7).

65/ Chon A. Noriega, "Ready for Prime Time: Minorities on Network Entertainment Television," UCLA Chicano Studies Research Center, May, 2002, p. 1.

66/ Radio-Television News Directors Association and Foundation, "RTNDA 2002 Women & Minorities Survey" (2002).

67/ See Most Influential Women in Radio, "Annual Gender Analysis" (August 7, 2002), available at www.radiomiw.com/pr_cmfl/pr_020808.cfm (analyzing M Street Trend Report on the status of women managers in the radio industry).

An Annenberg Public Policy Report, "Women Fail To Crack the Glass Ceiling in Communication Companies" concluded that fewer than one in five board members of the largest communications companies are women. 68/ The report found that among the presidents and CEOs of over 120 broadcast television and cable networks, only 165% are women, and only one in five heads of local television stations and cable systems are women. 69/ Former Commissioner Susan Ness of the Annenberg Center commented that "[w]ith few exceptions, we have not moved beyond tokenism in the number of women in top leadership positions or serving on the boards of communications companies." 70/

This evidence points to what should be obvious: the suspension of EEO rules did not miraculously bring about the full inclusion of minorities and women in broadcasting and cable.

4. Recruitment For Each Vacancy Is Hardly "Fruitless"

In its Reply Comments, the NAB makes the surprising assertion that "job-specific recruitment" is "typically fruitless" and, that "broad, general outreach almost always yields a better pool of available candidates[.]" 71/

If job-specific recruitment is such a waste of time, why have broadcasters bothered, for seven decades, to put notices for specific positions on their bulletin boards, in trade publications, and in daily newspapers? Why do they bother putting these job vacancy announcements on their own websites?

Like other businesspeople, broadcasters cannot possibly know of the existence and availability of every qualified person for every vacancy. No broadcaster can risk hiring a weak job candidate; thus, almost no broadcasters draw only their often-stale resume files when a new job is open. Instead, broadcasters recruit to determine who is immediately available. And when they recruit, the Commission ought to expect them to recruit broadly enough to reach the entire community.

68/ See Annenberg Public Policy Center, "The Glass Ceiling in the Executive Suite: The Second Annual APPC Analysis of Women Leaders in Communication Companies," p. 4 (2002) ("Glass Ceiling Report"), available at www.appcpenn.org.

69/ Annenberg Public Policy Center, "Women Fail to Crack the Glass Ceiling in Communication Companies (August 27, 2002), available at www.appcpenn.org.

70/ Glass Ceiling Report, *supra*, p. 4.

71/ NAB Reply Comments, p. 5.

While some nonprofit organizations have a difficult time finding qualified people to refer for job openings, other nonprofit organizations are quite adept at identifying good candidates that broadcasters might not otherwise locate. For example, there is hardly an Urban League chapter in the United States that does not successfully place qualified minorities in broadcasting jobs.

Nonetheless, the STBAs object to the use of what they call "intermediaries" or "middlemen" to help spread the word that jobs are available. The kind of "middlemen" the STBAs do not want to use are "minority-owned contractors or focused nonprofit organizations." 72/ Specifically, the STBAs wonder who will "regulate" these groups, control their "rates" and the like. 73/

This objection is an insult to the thousands of nonprofit organizations, such as local units of the Urban League, the NAACP, LULAC and NOW, as well as churches and colleges, who for thirty years have worked for free to help broadcasters find qualified applicants, including minorities and women. No one has suggested that broadcasters should be required to pay anyone for a service they almost always can and do receive for free.

5. Broadcast Hiring Is An "Insular" Process

The NAB takes issue with the Comments of AFTRA, and others, who asserted that broadcast hiring is often insular and conducted by word of mouth from a homogeneous control group. 74/ However, dozens of Commission decisions have held that stations failed to recruit broadly enough to reach minorities or women. 75/ This is hardly a trivial issue, since "[u]nder appropriate circumstances such 'word of mouth' recruiting may violate Title VII because it unreasonably restricts job information." 76/

72/ STBAs Reply Comments, pp. 22-23 (discussing Comments of the NAACP, filed April 15, 2002, p. 3.)

73/ STBAs Reply Comments, p. 23.

74/ NAB Reply Comments at 14-15.

75/ A Lexis search found 35 of these decisions by the Commission issued over the past ten years. This search did not include Bureau orders, and of course it did not take account of any of the thousands of stations whose recruitment practices were not called to account by a petitioner to deny.

76/ Blumrosens Study, p. 65. See Alfred W. Blumrosen, "The Duty of Fair Recruitment Under the Civil Rights Act of 1964," 22 Rutgers L. Rev. 465 (1986), reprinted, A.W. Blumrosen, Black Employment and the Law, 218-295 Rutgers University Press (1971).

The en banc hearing testimony of, inter alia, Hugh Price, Joan Gerberding, Cathy Hughes and Charles Warfield shows that much broadcast hiring takes place through insular networks. 77/ Furthermore, here is what some of the witnesses in the 1999 EEO proceeding had to say about word of mouth recruiting:

W. Don Cornwell: [W]ord-of-mouth recruitment is very significant in the broadcast industry. Intern and part-time positions are many times filled through in-house referrals and when full time positions become available, these "known" workers typically lead the recruitment list. Thus, if a company is not ethnically diverse at the outset, the word-of-mouth process can be detrimental to minorities seeking the full time jobs. 78/

Russell Perry: The good-old-boy network is working, as usual, but it's working with a FCC-driven monitoring force. Without policing, employment opportunities would not exist for minorities and women. The industry has not encouraged minorities to apply for existing employment opportunities. 79/

Pearl Murphy: It has been very rare for our graduates to secure employment at stations that have not bothered to recruit them, because our students are not part of the old boy network. They have no way to know when a position becomes available, unless they learn of the opening because the company recruited with us. 80/

77/ See p. 11 supra.

78/ Statement of W. Don Cornwell, Chairman and CEO, Granite Broadcasting Corporation, New York City, in Comments of EEO Supporters, MM Docket No. 98-204 (Broadcast and Cable EEO Rules), filed March 5, 1999, Vol. III, Exhibit 3 ("EEO Supporters 1999 Comments").

79/ Statement of Russell Perry, CEO, Perry Publishing and Broadcasting Company, Inc., Oklahoma City, OK, in EEO Supporters 1999 Comments, Vol. III, Exhibit 17.

80/ Statement of Sharon Pearl Murphy, Executive Director, African American Media Incubator, Washington, D.C., in EEO Supporters 1999 Comments, Vol. III, Exhibit 15.

Veronica Cruz: There is not an easy flow of information about opportunities for different minority groups. Often they are isolated by their cultural background and their schools. The EEO policy is important for its impact on programming offered by stations and for providing minorities with knowledge of entry level positions for which they are qualified. It has, to some extent reduced the reliance of word-of-mouth recruiting. 81/

Joe Madison: The lack of aggressive enforcement has impeded opportunities for minorities. Furthermore it has failed to reduce excessive reliance on old boys network which permeate the broadcasting culture. Indeed individuals with no experience are given on-air, prime positions in key time slots (two prominent, examples are Oliver North, (WRC), Danny McLain (WXYZ, Detroit) over and above African-American, Hispanic or other minorities who have been working at stations in designated weekend slots for years. The EEO policy helps to attract the best talent in a particular community, and not just the better connected. It provides opportunities for those who have not gained access to what has been essentially a word-of-mouth, closed community. 82/

Tom Castro: Most positions get filled so fast, that if a person does not know someone in the industry, without the outreach efforts, including notification, you are never going to find out about job openings. A promising person who is known by somebody, who knows the decision-makers, usually fills entry-level positions....Without this enforcement, I fear there would be a reversion to good old boy network....in the 90's, the word has filtered through to young people that if they don't know someone in the industry, it is back to the way it used to be. 83/

81/ Statement of Veronica Cruz Executive Director, African American Media Incubator, Washington, D.C., in EEO Supporters 1999 Comments, Vol. III, Exhibit 4.

82/ Statement of Joe Madison, Program Director, WOL(AM), Lanham, MD; talk show host; former Director of Voting Rights, NAACP; member, NAACP National Board of Directors, in EEO Supporters 1999 Comments, Vol. III, Exhibit 13.

83/ Statement of Thomas Castro, President, El Dorado Communications Corp., Houston, TX, in EEO Supporters 1999 Comments, Vol. III, Exhibit 2.

Finally, the NAB asserts that "insular recruitment is not necessarily unlawful or unwise." ^{84/} The NAB is correct in asserting that insular recruitment is not always unlawful; certainly a fully integrated control group, recruiting in an "insular" way will perpetuate an integrated workforce in the future. ^{85/} However, insular hiring is unwise, since it deprives the industry as a whole of the career potential of those not found within broadcasters' insular social and business networks.

**6. Form 395 Should Not Be Addressed In This
Proceeding; But If It Is, It Should Be Retained**

Form 395 is not a discriminatory document -- like the Census, it neutrally records the presence of both genders and all races.

This benign research instrument has two purposes. Its primary purpose is to provide a barometer of the depth and nature of industrywide EEO performance, including industrywide discrimination. ^{86/}

^{84/} NAB Reply Comments at 15.

^{85/} As we noted in our Comments, "'word-of-mouth' recruitment may continue if the broadcaster also attempts to reach those not within the usual word-of-mouth circle." EEO Supporters Comments, pp. 57-58 (emphasis in original).

^{86/} For a discussion of the usefulness of Form 395 data for industry analysis purposes, see the expert witness declaration of Drs. C. Ann Hollifield, Dwight E. Brooks and Lee B. Becker, University of Georgia, May 29, 2002 (Exhibit 1 to the Reply Comments of EEO Supporters).

Furthermore, as the federal courts have reiterated again and again, statistical evidence of the extent to which minorities and women were hired is certainly probative of whether the employer discriminated. 87/ In FCC cases, this evidence usually is invoked in mitigation. 88/ Thus, Form 395 has been noncontroversial for 30 years. Indeed the Commission is prohibited by Section 334 of the Act from eliminating it. 89/

Unfortunately, the NAB has put forth this patently excessive statement:

The Annual EEO Public File Report and FCC Form 395-B serve no discernible purpose other than to assist third party interventions in license renewal/transfer proceedings. 90/

The NAB apparently means that publicly available information about broadcasters' EEO performance might help civil rights organizations evaluate and build upon their own incomplete knowledge of whether a broadcaster is violating the law, and seek redress with the FCC for such violations of law. The NAB thinks that is wrong.

87/ See, e.g., Shell Oil, supra, 466 U.S. at 80-91 (employment data helps the EEOC to "identify and eliminate systemic employment discrimination.") The Blumrosens Study is an outstanding example of the use of EEO-1 data to document systemic, intentional discrimination. Their methodology permits the use of this data with respect to individual employers as well.

88/ In EEO jurisprudence, including the Commission's EEO jurisprudence, Form 395 data is most commonly used by respondents, not complainants. Its most common use is to deflect allegations that the respondent discriminates. The STBAs and the NAB should consider the implication of their campaign against statistical data: if this data cannot be used to support a case of discrimination, it also cannot be used to defend against one.

89/ The NAB maintains that "Congress had no reason to enact the Section 334 provision barring revision of the employment forms without the existence of the EEO outreach provisions." NAB August 13 Letter, p. 4. This argument is addressed at length in the NOW et al. ex parte letter to Hon. Marlene H. Dortch, September 18, 2002, pp. 5-6. We subscribe to NOW et al.'s analysis.

90/ NAB EEO Views.

The NAB's statement reflects a deep and unfortunate shift in argument. Heretofore, the NAB has opposed EEO data gathering almost entirely on "burdensomeness" grounds. Now the NAB is actually opposing EEO data gathering expressly because EEO data could help rout out lawbreakers. The NAB has just crossed the line that divides the protection of its members' petty cash drawers from the concealment of its members' unlawful behavior. 91/

Citizen groups cannot use Form 395 to argue that "the station does not hire minorities; therefore, its recruitment efforts must be flawed." However, citizen groups should be able to use Form 395 to supplement an argument like this: "these three reliable witnesses state they have firsthand evidence of discrimination; furthermore, the station took down the "EOE" tags on its website, and one of our witnesses states that when she recently worked at the station, she counted heads and concluded that the station did not employ any minorities." In such a case, Form 395 ought to be available because it provides more accurate information. Broadcasters should prefer accuracy, where the alternative is the filing of petitions based on imperfect "head counts."

For their part, the SBTAs state that disclosure of Form 395 data is unconstitutional because "the Commission offers no promise in this Rule Making that it will not use station-attributable data reflecting the race, ethnicity and sex of employees when making EEO enforcement decisions." 92/ We trust that the Commission will

91/ In their role as journalists, broadcasters usually take offense to proposals to restrict public access to information that could reveal unlawful behavior. The modern civil rights movement would have been impossible but for network television stations' dramatic, unbiased and unrelenting exposure of the apostles of segregation. See, e.g., Christopher Sterling and John Kittross, Stay Tuned: A History of American Broadcasting (2002 ed.), p. 447 (television "provided momentum for the civil rights movement of the 1960s, in news reports, documentaries, and other programming.") Evidently, the industry's journalistic initiative stops at the industry's own back alley.

92/ STBAs Reply Comments at 11. The STBAs also state that "MMTC has made it clear that it intends to use these reports to compare broadcasters' employee profiles with those of their local workforces." Id., p. 12. Leaving aside the fact that MMTC does not bring EEO adjudications, the statistical comparisons the STBAs refer to could not be introduced as evidence of the inadequacy of a recruitment plan. However, these statistical comparisons are exactly what courts require decisionmakers to consider in cases of intentional discrimination. These comparisons are hardly "unconstitutional pressure", any more than the ability to use this kind of data in an individual or systemic Title VII or Section 1983 case would be "unconstitutional pressure."

restate its often-expressed intention not to use this data to enforce the recruitment sections of the EEO rule. 93/ If the Commission breaks its promise, a broadcaster is free to bring an as-applied challenge in court.

It is at least theoretically possible that some poorly advised and ill informed broadcaster, somewhere, could infer from the Commission's consideration in this proceeding of Form 395 that Form 395 must have something to do with the enforcement of recruitment regulations. To counteract this obvious misimpression, we suggested that the Form 395 issue should be exported into a proceeding that is divorced from the recruitment issue. 94/ Industry associations ought to embrace our proposal, since it would eliminate confusion among their own members and erect an even thicker wall between Form 395 and any impermissible uses thereof -- which is exactly what they have been advocating.

Unfortunately, the STBAs have rejected our proposal to sever the Form 395 issue, saying that "[s]everance of this subject is like saying to the Commission: 'Let's only talk about what the rules should say and later we will discuss how they should be implemented and enforced.'" 95/ The STBAs' characterization is a 180-degree misstatement of our proposal, however. Our proposal is crafted precisely to eliminate even the erroneous appearance that the Commission would somehow intend to use Form 395 as part of the means by which the outreach rules "should be implemented and enforced." 96/

93/ The STBAs' analogy to the "unconstitutional pressure" found in Lutheran Church is flatly inapposite. See STBAs Reply Comments, p. 12. The Commission has repeatedly rejected this argument. See, e.g., Review of the Commissions Broadcast and Cable Equal Employment Opportunity Rules and Policies (First R&O), 15 FCC Rcd 2329, 2394-2400 ¶¶63-64 and ¶¶163-178 (2000), recon. and clarification granted in part, 15 FCC Rcd 22559 ¶¶37-39 (2000), reversed in part, MD/DC/DE Broadcasters, supra. In Lutheran Church, the Court was concerned that the Commission allegedly used a specific statistical test (colloquially, the "zone of reasonableness" or 50% of parity test) based on Form 395 data to decide whether or not to investigate the adequacy of recruitment practices. Here, the Commission does not propose to use this or any other statistical test to decide whether to investigate the adequacy of recruitment practices.

94/ See EEO Supporters Comments, pp. 135-136.

95/ STBAs Reply Comments, p. 29.

96/ Id.

The Commission might recall that in 2000, it acceded to the wishes of, inter alia, the Virginia and North Carolina state broadcast associations in creating "Option B" -- whose inclusion in the 2000 rules led to the remand in this case. The Commission should learn from this history and reject the STBAs' and NAB's invitations to address Form 395 in this proceeding. It is not difficult to predict what will happen if Form 395 is addressed in this proceeding: if the Commission rejects Form 395, the Commission will become the only government agency in the nation that refuses to recognize thirty years of precedent requiring the consideration of all evidence that corroborates -- or mitigates -- otherwise well founded allegations of intentional discrimination. But if the Commission retains Form 395 in this proceeding, it will have enabled opponents of EEO regulation to manufacture the following issue for the court: "Whether the FCC, by adopting Form 395 in a proceeding aimed at discrimination-prevention, has inherently embraced the improper use of Form 395 and thereby incentivized discrimination." The Commission should not fall into this obvious trap.

Finally, in our Comments, we proposed, as a further compromise, that the Commission keep station-attributed reports confidential for three years. 97/ The STBAs dismiss this as "mere subterfuge" because "[t]hree years of confidentiality simply does not protect against the imposition of such unconstitutional pressure." 98/ The STBAs do not explain why this compromise is inadequate, however. To our knowledge, no petition to deny has ever been filed whose allegations of EEO misconduct invoked a statistical record that was more than two years stale. The STBAs cite no such case either.

Thus, we have proposed three levels of protection against any supposed "unconstitutional pressure" --

1. the Commission should not use Form 395 data to evaluate recruitment, and it would keep its repeated promises to dismiss petitions to deny urging such evaluations;

2. the Form 395 issue should be resolved in a proceeding divorced from EEO recruitment issues, so that not a single poorly informed broadcaster could form the misimpression that Form 395 is linked to evaluation of recruitment efforts; and

3. the Form 395 data should be withheld for three years in a manner that would eliminate its usefulness except in intentional discrimination cases.

97/ EEO Supporters Comments, pp. 131-135.

98/ STBAs Reply Comments, p. 29.

That ought to be enough. Anything more would cross the line into protection of intentional discriminators. That would be a step into a different realm of unconstitutionality, 99/ and offense to the Act, 100/ that we trust the Commission would never take. It is not a proper purpose of government to conceal information that could help establish serious violations of law.

7. **Texas TV Stations Were Not Oppressed By LULAC's
1993 Challenge To Systemic EEO Noncompliance**

The constructive tone of the June 24, 2002 EEO hearing was interrupted by the following passage in Texas Association of Broadcasters' Executive Director Ann Arnold's testimony. Referring specifically to a group of Texas cases involved "in an enforcement action in 1994", Ms. Arnold testified that:

99/ See EEO Supporters 1999 Comments, Vol. II, pp. 117-134
(explaining why the Commission lacks discretion to refuse to remedy the consequences of its own efforts to facilitate discrimination.)

100/ As noted above, Form 395 is required by Section 334. See p. 28 n. 89 supra. Furthermore, Section 151 of the Act created the Commission, inter alia, "so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service" (emphasis added to include new language contained in the Telecommunications Act of 1996). On its face, Section 151 is non-self-executing; consequently, Congress expects the Commission to write rules implementing it.

the EEO rules you promulgate are misused to abuse, threaten and blackmail radio and television stations....Individual broadcasters are actually afraid to complain to you about it, but they tell me about the calls they get asking for thousands of dollars for preparation of "minority recruitment plans" for their station in exchange for dropping protests of their license renewals....Broadcasters tell me and sometimes they even tell white male applicants that they cannot hire anyone but a minority. Rightly or wrongly, in the face of the regulatory environment created by the FCC regulations the broadcasters believe they must find a minority for an opening, especially if the economic downturn has caused them to downsize or have fewer openings. I have agonized truthfully at the prospect that these broadcasters will be caught in a Catch-22 situation, a trap, and find themselves sued for reverse discrimination. 101/

Chairman Powell's response was on point: "if they are false and unsubstantiated, there is nothing to fear, and people shouldn't pay." 102/

The NAB went even further, implying that the reason the civil rights organizations want EEO rules is so they can bring civil rights litigation -- as though that is something anyone would actually enjoy having to do. 103/

101/ Tr. pp. 41-43.

102/ Tr. 56.

103/ See NAB Reply Comments, p. 3 (suggesting that the civil rights organizations "seek changes to the Commission's proposed rule that would facilitate their examination of broadcast stations' workforce compositions for purposes of subsequently filing challenges to license renewal applications of stations whose staffs they deem insufficiently diverse [so the Commission will] impose on broadcasters the exact 'pressure' to focus their recruitment efforts on minorities and women proscribed by the court in Lutheran Church and reinforced in [MD/DC/DE Broadcasters].") The fact is that for 150 years, ever since post-Civil War reconstruction, civil rights organizations have sought strong civil rights laws in order to reduce the necessity of having to bring lawsuits. When norms are strong and are clear, few cases ever need to be brought, which would be delightful.

The TAB was employing a tactic familiar to every student of negative political advertising:

1. Dredge up some ancient matter;
2. Pick a matter that nobody felt aggrieved enough about to raise at the time it happened;
3. Provide enough information to identify who is being attacked, but do not actually utter the name of the party being attacked when doing so would plainly show that the allegations are ridiculous;
4. Give only unsourced, undocumented "information", naming no names and providing not one verifiable fact;
5. State that the accusers are fearful and intimidated, notwithstanding that they are well represented by experienced counsel, suffered no cognizable harm and have never been fearful in any other context; and finally,
6. Make allegations that are objectively untrue.

Owing to Rule 11, anti-greenmail rules and fear of retaliation -- not to mention the underlying integrity of most civil rights organizations -- only a tiny fraction of civil rights litigation in any forum is abusive. Yet the TAB, apparently recognizing that it has no meritorious arguments, has desperately started to whisper that civil rights work is nothing more than "blackmail." This isn't new: in their day, similar allegations were raised against and rebutted by Frederick Douglass, Susan B. Anthony, Martin Luther King, Cesar Chavez, and Thurgood Marshall.

As set out below, the very case in Texas that was mentioned in the en banc hearing is actually an instructive example of how EEO litigation is supposed to work. We have chosen to set out the history of that litigation here in order to help the Commission understand how responsible petitioners to deny bring EEO allegations to the agency's attention.

The "enforcement action in 1994" in Texas that Ms. Arnold was referring to was the petition to deny the license renewals of 16 Texas television stations, filed on July 1, 1993 by the League of United Latin American Citizens ("LULAC"). LULAC is the oldest and largest Hispanic civil rights organization in Texas and in the nation. LULAC, one of the EEO Supporters, has provided a declaration of its communications counsel, Eduardo Peña, Esq. (Exhibit 4 hereto) describing the litigation. Mr. Peña states:

I am the communications counsel for the League of United Latin American Citizens (LULAC). Previously, I served as the National President of LULAC and, before that, as Director of Compliance for the EEOC for ten years. I have practiced civil rights law for nearly four decades, and I formerly was a part owner of a television station that was affiliated with the ABC and later the Telemundo network. Over the past twenty years, I have participated in many FCC adjudicative and rulemaking proceedings. In 1993, I was a partner in the Silver Spring, Maryland firm Alexander, Gebhardt, Aponte and Marks.

With the authorization of and on behalf of LULAC, I am responding to Texas Association of Broadcasters (TAB) Executive Director Ann Arnold's suggestion, in her June 24, 2002 testimony at the FCC's en banc EEO hearing, that there was some irregularity in LULAC's challenge to various Texas television stations' license renewals in 1993. The allegation that LULAC would ever be involved in some kind of oppressive behavior is disappointing, insulting and absolutely wrong.

LULAC is keenly aware of the importance of television in focusing public attention on issues facing minority groups, as the Kerner Report documented and explained in 1968. National television coverage of the African American civil rights struggle in the south contributed profoundly to the success of the movement; yet the failure of southern television stations to discuss civil rights on the air did much to delay African Americans' attainment of the most elementary attributes of citizenship. Likewise, in Texas in 1993, the near-absence of Hispanics in broadcast journalism and public affairs staffs presented an impediment to having our issues addressed on the air. At LULAC's national conventions in the early 1990s, speakers and panelists complained bitterly that there were few people inside the television stations who were familiar with our issues, or who knew the people who were driving those issues. Thus, news directors and assignment editors tended to cover other matters with which they were already familiar or with which they could empathize.

For years, we had heard too many accounts from well qualified Hispanics that they could not secure employment at the Anglo stations. Few complaints were filed, since by filing such a complaint against an employer in a close-knit industry a person often throws his career out the window by becoming labeled a "troublemaker."

LULAC was fed up with this, and it decided to do something about it.

LULAC also recognized that while the FCC had had EEO rules since 1969, its enforcement staff relied almost entirely on complaints from members of the public to alert the Commission to problems with particular licensees. Thus, LULAC felt it was our duty to report EEO violations to the Commission.

LULAC is not a stranger to the Texas Association of Broadcasters (TAB). We are their neighbors -- indeed, we long predated their existence. LULAC was founded in Texas in 1929, around the time when television was invented and five years before the FCC was created. Some LULAC members are broadcasters in Texas. In 1993, any broadcaster could have called our national headquarters, or our local representatives, to reach out to us or to share their concerns with anything we did.

LULAC is not some obscure "concerned citizens" group created to challenge a license and seldom lasting longer than the FCC's ruling. It is as conservative and mainstream as an organization created to defend the civil rights of Americans can be. When LULAC brings EEO litigation before the FCC, its road map is the same as that followed by the Office of Communication of the United Church of Christ and by the NAACP. In particular:

- we target only apparent "bad actors", irrespective of irrelevant factors like the parent company's size or a pending sale of the company;
- we seek nothing for LULAC itself;
- we never seek to oppress or embarrass our opponents; and
- in the event of a settlement, we always put all the terms in writing and document any reimbursable expenses carefully according to FCC standards.

LULAC has operated for eight decades under the highest standards of ethics. In Texas and throughout the United States, we have won renown for our diligent and aggressive battles against discrimination and for equal opportunity. In Texas, LULAC lawsuits brought about the desegregation of the "Mexican Schools", the elimination of the Poll Tax and the participation of Mexican Americans on juries. In California and Texas, LULAC lawsuits ended the prevalent practice of assigning Hispanic students into classes for the retarded. More recently, LULAC lawsuits against the State of Texas compelled the University system and the Texas Highway Commission to correct their longstanding practices of neglecting the educational and economic development needs of South Texas and the counties along the border, where almost half of the Hispanics in Texas reside.

Not all of LULAC's effort to improve the quality of life in Texas are achieved through litigation. LULAC councils throughout the state help to feed the hungry, and to clothe and shelter the poor. We work tirelessly to improve the educational system in the state. LULAC programs help students stay in school, graduate from high school and continue into college and graduate school. Since 1929, one of the principal efforts of LULAC councils has been to provide encouragement and support through the most extensive scholarship program available to Hispanic students in Texas.

Surely the Texas Association of Broadcasters knew something about these and many other efforts by LULAC members to help make Texas a better place to live. Our efforts in the broadcasting industry, which influences so much in our society, are no less important.

Understandably, the targets of LULAC's battles are not always enamored of everything LULAC does. No one wants to be the subject of a civil rights action, even if such an action is well deserved.

As a group, Texas broadcasters' record of Hispanic employment is so weak that only the presence of systemic discrimination explains it. In 1992, FCC Form 395 data disclosed that there were 4,525 full time high pay (management, sales, professional and engineering) employees of Texas television stations, of whom 781 (17.3%) were Hispanic. However, when the Spanish language stations were omitted, these numbers become rather shocking: 513 out of 4,150 (12.4%) were Hispanic. In the 1990 Census, 25.5% of the Texas population was Hispanic. LULAC recognized that this wide a disparity could not be explained except as the fruit of intentional discrimination.

With 117 television stations in the state in 1993, our due diligence effort had to be very comprehensive. In preparing for litigation, we had two objectives: first, do not put EEO compliers through the travails of litigation; second, do not allow EEO noncompliers to escape accountability.

Thus, we reviewed the EEO performance and EEO programs of every television station in the state -- an enormous, tedious and very time-consuming task. Local LULAC councils, whose officers are volunteers, possessed years of collective knowledge of the stations' operations. They often heard from Hispanics who worked in the media and knew who was, and who was not, providing equal opportunity. In our due diligence, we usually found Form 395 data to be useful in mitigation, while the stations' 1988 and 1993 EEO programs (Form 396) often provided evidence in corroboration. In at least two instances, however, the Form 395 data was so extreme that it tended to support inferences of intentional discrimination that we had drawn from other evidence we possessed.

As a former Director of Compliance of the EEOC and a civil rights lawyer throughout my professional life, I can affirm that this is what happens normally in planning for EEO litigation.

As a result of our initial due diligence, we divided the television stations in Texas into four categories:

- (1) those that we knew were nondiscriminators and EEO compliers
- (2) those for which we could not form an opinion as to whether they were nondiscriminators and EEO compliers
- (3) those we believed to be neglectful of their EEO compliance obligations, although we did not believe them to be intentional discriminators
- (4) those we believed were deliberate EEO noncompliers and, in most cases, deliberate discriminators.

These four categories are normal for civil rights litigation. As I noted above, LULAC did not focus on the parent company's size, whether the station was likely to be sold, or any other irrelevant factors. Instead, LULAC and other mainstream civil rights organizations focus only on stations that appear to be EEO noncompliers, to the exclusion of extraneous matters.

Of the 117 television stations in Texas in 1993, 98 were in category (1) or (2); that is, there were no grounds or insufficient grounds to question their FCC EEO bonafides.

Another three stations were in category (3). We did not challenge these stations' renewal applications. Instead, we wrote each of them a letter stating that they had been excluded from the petition to deny, but encouraging them to be more attentive to their EEO responsibilities. We did not ask them to do anything more than that.

Sixteen of the stations were in category (4), and we challenged the renewal applications of each of them. These stations were 13.7% of the 117 television stations in Texas. The stations were located in the following markets: College Station, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Lubbock, San Angelo, San Antonio, Sweetwater and Wichita Falls,

Much has been made of the role of Form 395 data in petitions to deny. As noted earlier, in at least two instances, the Form 395 statistics were so extreme that they added to inferences of discrimination we had derived from other evidence. However, the 1993 percentages of minorities among the top four category employees of the stations subject to our petition to deny ranged from 0% to 46%, with a median of 26%. These statistics -- which may surprise those who think citizen groups file petitions to deny by just counting heads -- reflects the fact that of all of the factors entering into an evaluation of whether discrimination may have occurred, overall employment statistics are only of secondary value.

The Petition was 35 pages in length, not counting exhibits.

We were careful not to "overplead." For example, we noted in the petition that one of the stations did not seem to be discriminating, but seemed instead to be operating outside the EEO rule through inattentiveness and neglect. Thus, as to that station, we sought only reporting conditions rather than a hearing, because reporting conditions seemed commensurate with the scale of its offense. (Later, when we found a database error in our petition, we withdrew it voluntarily as to that station.

The FCC's staff, finding that a prima facie case of discrimination had been made out, conducted investigations of the allegations raised against six of the stations.

The dispositions of the stations' applications were as follows:

- Two cases were resolved with admonishments.
- Five cases were settled; these settlements were each approved by the FCC, and sanctions were not imposed.
- One case was settled, with Commission approval, but the Commission also imposed a conditional renewal and a forfeiture.
- One rather dramatic case resulted in a short term conditional renewal with a forfeiture.
- Six cases resulted in unconditional renewals.
- As noted above, one case was withdrawn by LULAC on its own motion.

These outcomes are normal for civil rights litigation. By comparison, the EEOC recently announced that 27% of private plaintiffs' workplace bias suits resulted in a recovery. See EEOC Litigation Report, 1997-2001 (August 13, 2002). As shown above, four out of 16 (25%) of the cases we brought resulted in FCC findings that the licensees' EEO performance had fallen short of what was expected.

Like almost every nonprofit organization, LULAC is open to settlement except in extreme cases. Sometimes, the parties' objectives can be achieved more efficiently through settlement than through continued litigation. A rule of thumb is that roughly 95% of all civil litigation eventually settles. At the FCC, only about 30% of EEO litigation settles. As shown above, of the 16 cases we brought in 1993 in Texas, six (38%) settled.

When we entered into settlement discussions, we did not propose anything the FCC had never before approved or was unlikely to approve. Nor, obviously, did we threaten any licensee with retribution if it did not reach agreement with us.

In approving these and all other settlements of EEO litigation, the Commission evaluates the merits of the allegations, as it must do under Section 309(d)(2) of the Communications Act. In all cases, the licensees were represented by experienced FCC counsel, and these lawyers did not hesitate to call me or my co-counsel, David Honig, if they had any questions or wanted to discuss settlement.

The settlements, when they occurred, sometimes were the product of LULAC's approaching the licensee, and sometimes were the product of the licensee approaching LULAC. As typically happens in any kind of litigation, these discussions occurred at "decision points" -- i.e., when a pleading cycle ended, or when the Bureau had just issued a decision. In two instances, settlement discussions did not result in settlement, but at no time did opposing counsel (who we knew very well) ever advise us that our settlement proposals were inappropriate.

When a licensee sought settlement discussions, or agreed with us that settlement would be appropriate, the first step was for us to send a settlement proposal to the licensee's counsel upon his request for one. Our starting point was a draft form I helped develop that amplified on FCC Form 396 while also including elements of EEO consent decrees commonly used by the EEOC and by litigants in EEOC matters for decades. Due to often intense negotiations, this form typically went through numerous revisions, iterations, and adjustments to fit the particular circumstances of each case and the needs and abilities of each licensee. The settlements we reached typically included substantive commitments which provided that the station would, e.g.,

- notify local LULAC representatives and other organizations whenever job vacancies occur, and such vacancies are not to be filled through promotion from within;
- operate a student internship program at the station, exposing students to various substantive areas of competency, such as sales, research, programming, production and promotion; and
- meet regularly with local LULAC representatives for nonbinding dialogue concerning recruitment sources, training, internship opportunities, staff diversity (particularly in news), means by which Hispanic organizations in the station's service area might participate in the station's programming, and opportunities for Hispanic businesses to provide goods and services to the station.

These provisions are consistent with sound EEO practice and LULAC regards them as serving the public interest. The Commission has never hesitated to approve voluntary agreements with these kinds of provisions.

Ms. Arnold alleges in her June 24, 2002 en banc hearing testimony that what was being sought, apparently by LULAC, was "thousands of dollars for preparation of 'minority recruitment plans' for their station in exchange for dropping protests of their license renewals." As shown below, that allegation is not true.

Ms. Arnold may not have meant to imply that this money would go to LULAC itself; actually, LULAC never sought nor received a penny for itself. Under the FCC's anti-greenmail rules, LULAC could have, and only did, seek a portion of the value of its documented legal expenses. Those expenses had to be reviewed and approved by the FCC's staff before any compensation could be made.

The preparation of a "minority recruitment plan" was an essential element of any settlement, obviously. But drafting this straightforward document and negotiating its terms with opposing counsel (often requiring three or four iterations) hardly represented all (or even a majority) of the legal work done on LULAC's behalf in the litigation. Under Office of Communication of the United Church of Christ v. FCC, 465 F.2d 519 (D.C. Cir. 1972) and Agreements between Broadcast Licensees and the Public, 58 FCC2d 1129 (1975), LULAC was permitted to seek reimbursement of a portion of its fees and costs in the entire case -- including due diligence and pleadings.

All settlement terms were always reduced to writing and submitted to the Commission for its approval. There were absolutely no side deals nor requests for same. Each case that was settled was submitted for Commission review through a joint petition for approval signed by both sides' counsel, and each case involving a fee reimbursement was supported by a detailed declaration of counsel, using the guidelines developed by (retired) FCC EEO Branch Chief Glenn Wolfe over twenty years ago.

Most critically, the FCC approved each settlement without modifications and without requesting additional documentation. The total amount of reimbursable fees would not pay a half-year's salary for a single broadcast manager. This kind of litigation is hardly a profit center for a law firm, which helps explain why so few lawyers bother with it.

Respectfully, if the purpose of a petition to deny is to call material facts to the Commission's attention, we fulfilled that purpose reasonably well. The facts we called to the Commission's attention are the kind of facts any agency with civil rights enforcement authority would want to know.

Finally, Ms. Arnold alleges in her en banc hearing testimony that broadcasters "tell me and sometimes they even tell white male applicants that they cannot hire anyone but a minority." Although I have come across many peculiar utterances in my years as an EEOC official and a civil rights lawyer, the possibility that more than one or two broadcasters ever said out loud so outrageous a thing as "I cannot hire anyone but a minority" seems implausible to me. A television station is almost always represented by experienced communications counsel and local counsel. These lawyers would have advised their clients that the station's FCC license would be on the line if a broadcast manager openly proclaimed that his station engaged in race discrimination.

As a former partner in a television station licensee, I know, and I'm sure every television station owner knows, that the FCC does not tolerate "reverse discrimination." On the other hand, discrimination against minorities and women, done covertly, happens far more frequently than most Americans would like to acknowledge.

* * * * *

Thus, LULAC clearly did the following:

1. It chose its targets fairly.
2. It did nothing to oppress or embarrass its opponents in the litigation.
3. It supported its allegations with relevant and material evidence.
4. It neither proposed, nor did it enter into any improper settlements.

The Commission has wisely chosen to rely on the good judgment of local citizens, rather than on its own police powers, in bringing allegations of certain kinds of misconduct to its attention -- including violations of the political broadcasting, indecency, children's TV and EEO rules. LULAC's 1993 Texas TV petition was a good example of why the Commission's trust in the public's good judgment is well placed. 104/

Unfortunately, for some, one petition to deny is one too many; the four lawyers who devote a portion of their FCC practices to civil rights litigation are four lawyers too many; and the participation before the FCC even of moderate, respected, decades-old national organizations like LULAC is too much to bear. Everyone is entitled to her opinion, but EEO opponents must not be allowed to use the record of this proceeding to smear the standard bearers of nondiscrimination.

* * * * *

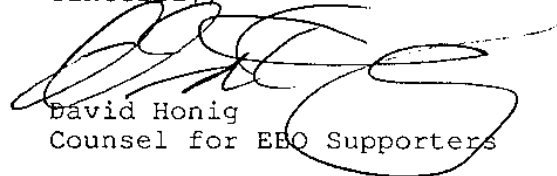
Conclusion

Two concluding notes: first, we are filing for the record and providing to the commissioners and to the Chief of the Bureau, copies of two documents from the Office of Communication, Inc., United Church of Christ: Kay Mills, Changing Channels: The Civil Rights Case That Changed Television, Civil Rights Forum on Communications Policy (2000) (discussing the WLBT-TV, Jackson, MS case that led to Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) ("UCC I") and Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (D.C. Cir. 1969) ("UCC II")), and "OC Inc. - The Untold Story," Videotape, 5/30/02, by the United Church of Christ (2002) (providing a history of the Church's efforts since 1955 to integrate the broadcasting industry).

104/ See MMTC, "FCC EEO Enforcement, 1994-1997" (1999) (discussed in EEO Supporters Comments, p. 63 n. 147 (reporting that for 251 EEO enforcement rulings from 1994-1997, in 62% of these cases, involving 155 licenses, the Commission found that the licensee had fallen short of the agency's minimal standards for effective EEO programs.) Virtually all of these cases were brought by listeners and viewers, usually represented by counsel who worked without compensation. See Testimony of Rev. Robert Chase, Executive Director, Office of Communication, Inc., United Church of Christ, Tr. 95.

Second and finally, we note that the Commission has initiated a review of its broadcast ownership rules. ^{105/} Traditionally, when more consolidation is permitted, efficiencies in the consolidated operations result in staff downsizing. Further, employees with the least seniority tend to be the first to go. In broadcasting, discrimination has made minorities and women the new entrants in the business -- they tend to enjoy far less seniority than whites and men. We do not wish to prejudge the ownership proceeding. However, everything the Commission does is interconnected with everything else it does. It would be a shame if the Commission imperils the careers of new entrants with one hand, and simultaneously fails to protect these new entrants from discrimination with the other hand. The contrapositive is also true: if the Commission does the best it can legally do to protect minorities and women from discrimination, it will be on far firmer ground if it elects to take steps that could result in the layoffs that follow in the wake of consolidation.

Sincerely,



David Honig
Counsel for EBO Supporters

cc: Hon. Michael Powell
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Hon. Michael Copps
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^{105/} 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (NPRM), MB Docket No. 02-277, FCC 02-249 (released September 23, 2002).

EXHIBIT 1

**THE REALITY
OF INTENTIONAL JOB DISCRIMINATION IN
METROPOLITAN AMERICA – 1999**

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This study was supported by a grant from the Ford Foundation to Rutgers University.

The views expressed are those of the authors,
not necessarily those of the Foundation or the University.

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ALFRED W. BLUMROSEN is the Thomas A. Cowan Professor of Law, Rutgers, the State University of New Jersey, specializing in Labor and Employment law. He received his BA and JD degrees from the University of Michigan, and has taught at Rutgers Law School since 1955. In 1965, he studied the enforcement of the New Jersey Civil Rights Law in "Anti-Discrimination Laws in Action in New Jersey: A Law-Sociology Study." 19 Rutgers Law Review 187. Beginning in 1965, he assisted in organizing the EEOC and served as its first Chief of Conciliations and Director of Federal State Relations, a Special Attorney in the Civil Rights Division, U.S. Department of Justice, Consultant to Assistant Secretary of Labor for Employment Standards Arthur Fletcher (OFCCP) 1969-71; Acting Director, Michigan Civil Rights Commission, 1972, organized programs on the 10th and 20th anniversaries of the Civil Rights Act, 1975 and 1984; consultant to EEOC Chair Eleanor Holmes Norton, 1977-79 concerning Guidelines on Employee Selection Procedures, Affirmative Action Guidelines. In 1995, he advised the U.S. Department of Labor concerning the "affirmative action-reverse discrimination" controversy, and reviewed programs of the EEOC for the Citizens Commission on Civil Rights. In 1998 he received a grant from the Ford Foundation to investigate the extent of current intentional employment discrimination.

He was Of Counsel to Kaye, Scholer, Fierman, Hays & Handler, (New York, NY) 1979-1982 advising employers on equal opportunity matters; Counsel to NAACP in *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115 (1989) [concerning the interpretation of Title VII of the Civil Rights Act] and in *NAACP v. Meese*, 615 F. Supp. 200 (D.D.C) 1985) [seeking injunction against rescission of consent decrees involving affirmative action]; Counsel to mainly white female employees challenging a discriminatory layoff in *Chrapliwy v. Uniroyal*, 670 F.2d 760 (7th Cir. 1982) cert. denied, 103 S. Ct. 2428 (1983), and counsel to the mainly white male employees, seeking equal pay in *Klask v. Northwest Airlines*, 57 FEP Cases 1147, 1152 (D. Minn. 1989, 91).

He has written MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY, (1993,

University of Wisconsin Press); *BLACK EMPLOYMENT AND THE LAW* (1971, Rutgers University Press), and numerous law review articles, including "Strangers in Paradise: *Griggs v. Duke Power Co.* and the Concept of Employment Discrimination." (1972) which has been cited by the U. S. Supreme Court in two decisions. His essay "Six Conditions for Meaningful Self Regulation" was awarded the Ross Prize by the American Bar Association in 1983. In 1993, he was a Fulbright Scholar in South Africa, where he examined whether U.S. equal employment experience would be useful in the post-apartheid period. In 1995, he was a resident scholar at the Rockefeller Institute Conference and Study center in Bellagio, Italy.

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RUTH GERBER BLUMROSEN is adjunct Professor of Law at Rutgers Law School, Newark New Jersey, and former associate Professor at Rutgers Graduate School of Management. She received her BA and Law degrees from the University of Michigan. She assisted in the establishment of the U.S. Equal Employment Opportunity Commission in 1965, where she was acting director of compliance. She was consultant to EEOC Chair Eleanor Holmes Norton in 1979-80, concerning guidelines under the Equal Pay Act and wage discrimination issues, U.S. EEOC, Hearings on Job Segregation and Wage Discrimination. She participated in development of EEOC policy statement on impact of layoffs on minorities and women. She was consultant on Equal Employment Opportunity, U.S. Department of Health and Human Services, 1980-81; Advisor, New Jersey Commission on Sex Discrimination in the Statutes, prepared analysis of state pay practices which was basis for action by Governor's Task Force on Equitable Compensation, 1974-77, a member and Hearing Officer, New Jersey Governor's Committee on minority and female opportunities in state contracting, 1991-93. In 1993, she was a Fulbright Scholar in South Africa, examining whether U.S. equal employment experience would be useful in the post-apartheid period. In 1995, she was a resident scholar at the Rockefeller Institute Conference and Study center in Bellagio, Italy. She has published in the field of wage discrimination including Wage Discrimination, Job Segregation and Title VII of the Civil Rights Act of 1964, 12 University of Michigan Journal of Law Reform 397 (1979), cited by U.S. Supreme Court in *County of Washington v. Gunther*, 452 U.S. 161 (1981); Wage Discrimination, Job Segregation: The Survival of a Theory, 14 Univ. of Michigan Journal of Law Reform 1 (1981); Wage Discrimination Revisited, 8 Women's Rights Law Reporter 109 (1984); Remedies for Wage Discrimination, 20 Univ. of Mich. Journal of Law Reform, 99, (1986). She has also written on the concept of work sharing as alternative to layoffs, and the use of unemployment compensation to facilitate part time employment. She is co-author of *Downsizing and Employee Rights*, 50 Rutgers Law Review 943 (1998). She has litigated under New Jersey Anti-Discrimination laws in the case which established the federal constitutionality of state fair housing laws (*Levitt v. New Jersey*, 31 N.J. 514, 363 U.S. 418 (1960)), and has represented male flight attendants denied their rights under the Equal Pay act in *Klask v. Northwest Airlines*, 57 FEP Cases 1147, 1152 (D. Minn. 1989, 91).

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The Rutgers Law School faculty and staff in Newark provided us with wonderful education and support for more than forty five years.

The University of Michigan provided an extraordinary learning environment, particularly at the Michigan Daily and the Law School, that has been the foundation of our work.

The Russell Sage Foundation supported an interdisciplinary experiment between the Law School and the Sociology Department of Rutgers in the 1950's that is reflected in this study. The Rockefeller Foundation provided a thoughtful month in Belagio where some of these ideas germinated.

The thousands of men and women involved in the implementation of Title VII of the Civil Rights Act of 1964 on all sides of all issues, whose lives we shared.

The millions of men and women whose efforts made the Civil Rights Act of 1964 and its implementation an evolving achievement of American democracy.

DEDICATION

To the memory of all those who shared in the adoption of
the Northwest Ordinance of 1787 that prohibited slavery
and provided that "schools and the means of education
shall forever be encouraged."

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EXECUTIVE SUMMARY

Intentional discrimination was “the most obvious evil” that the Civil Rights Act of 1964 was designed to prevent. Is intentional discrimination still a potent force restricting job opportunities for women and minorities? Or, is it what University of California Regent Ward Connerly suggested in 1998, “Black Americans are not hobbled by chains any longer. We’re free to compete. We’re capable of competing. It is an absolute insult to suggest that we can’t.”¹ Which is it: a “level playing field,” or an uphill struggle for women and minorities against intentional job discrimination that favors whites/males?

This question is answered in a four year, 1,400 page study of the race color and sex of employees in large and mid sized private business establishments – THE REALITIES OF INTENTIONAL JOB DISCRIMINATION IN METROPOLITAN AMERICA – 1999, by Rutgers Law School Professor Alfred W. Blumrosen and adjunct Professor Ruth G. Blumrosen. Supported by a grant from the Ford Foundation to Rutgers University, the study is based on employers’ annual reports to the Federal Government involving 160,000 establishments employing 37 million workers. It involved a computer analysis of these reports combined with Supreme Court and Congressional rules to identify “patterns and practices” of intentional job discrimination of the Supreme Court and Congress.

In 1991, Congress confirmed that intentional discrimination exists when “race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”² “Intent to discriminate” is not the equivalent of “evil motive,” where a personal wish or desire to oppress women or minorities is the *only* explanation for the harm done. If an employer has both a legitimate reason for its practices and also a discriminatory reason, it is engaged in intentional discrimination.

The study found that intentional job discrimination continues on a major scale. Blacks, Hispanics, Asian Pacific workers and White Women who have the knowledge, skills, abilities, and experience to compete are deprived of that opportunity by intentional discrimination between a quarter and a third of the time they seek such opportunities.

- In 1999, intentional discrimination affected two million minority and female workers. It exists in every region of the country, in each of nine occupational categories from officials and managers to labor and service jobs.
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- Seventy five thousand establishments discriminated intentionally against 1.3 million minorities; while 60,000 establishments discriminated intentionally against 952,000 women. Despite the persistence of intentional discrimination, the majority of establishments did not appear to engage in it. As a result, minorities and women have increased their participation in the labor force and in their proportion in better paying jobs.
 - Forty industries were “equal opportunity discriminators” -- discriminating against 75% of the Blacks, Hispanics, Asian-Pacific workers and White women who were affected. The top ten of these industries were Hospitals, Eating and Drinking Places, Department Stores, Grocery Stores, Nursing and Personal Care Facilities, Computer and Data Processing Services, Hotels and Motels, Telephone Communications, Commercial Banks and Motor Vehicles and Equipment Manufacturing.
 - Medical, Drug and Health related industries alone accounted for 20% of Women, Blacks, Hispanics and Asian Pacific workers affected by discrimination.
 - Ninety percent of the affected workers were subjected to discrimination that was so severe that there was only one chance in 100 that it occurred by accident. That is far more than enough to trigger a legal presumption of intentional job discrimination.
 - Between one third and one half of this discrimination was caused by “hard core” establishments that had been discriminating for at least nine years.

§5. BACKGROUND OF THE STUDY

Private employers of 100 or more employees and government contractors of 50 or more employees have been required to file annual reports, called EEO-1 reports, since 1966 with the U.S. Equal Employment Opportunity Commission and the Department of Labor. The study obtained computerized versions of these reports from the EEOC with the names and identifying addresses of employers expunged to preserve employer confidentiality. The statistics only identify the state and Metropolitan Statistical Area in which establishments are located.

Intentional job discrimination was identified by examining establishment reports in each metropolitan area by industry. Within each industry, nine occupational categories were examined separately. In this way, the average utilization of men and women, Blacks, Hispanics and Asians in each industry and occupational category within each metropolitan area was obtained. Establishments that were so far below the average utilization of minorities or women that it was

unlikely to have occurred by chance, stood out “like sore thumbs” in this analysis. They are presumed by law to be intentional discriminators under legal rules developed since 1977. In that year, the Supreme Court explained that a statistical imbalance, “is often a telltale sign of purposeful discrimination.... In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination...” In law suits, employers would have the opportunity to show that the statistics were inaccurate or that they had only good reasons for the abnormally low utilization, a burden that is difficult to satisfy. The study suggests that most establishments facing these statistics would settle rather than litigate.

Workers affected by this discrimination were measured by the difference between the number actually employed and the number that the apparent discriminator would have employed if it had employed minorities/women at the average. This is the standard the Supreme Court has applied in cases of intentional discrimination. There is no single average in the study. For each occupation in each establishment, the average utilization varies depending on the number of qualified available workers in the labor market, industry and occupation. The average is not a quota—it is a fact, showing how similar employers have employed minorities and women in the same occupation under the same labor market and industrial circumstances.

The study addresses some of the most common employer explanations for such low levels of minority and female employment, such as women aren’t interested in the work, [they are doing the same work for other similar employers]; no qualified workers were available. [qualified workers were available because they were doing the same type of work for other employers.]

§6. THE BURDEN OF DISCRIMINATION

What is the risk that a minority or woman will face discrimination because of their race, sex or national origin when seeking an employment opportunity? The study found that the probability of discrimination varied with the kind of job being sought. The table below describes the probability of discrimination by occupational category. The percentages apply each time a person sought an employment opportunity, be it employment, promotion, assignment, layoff, discharge or other employment related activities.

Risk of Discrimination because of race, sex, national origin each time a job opportunity is sought in the occupation.

	Blacks	Hispanics	Asian	Women
Officials and Managers	26.6%	21.8%	24.6%	18%
Professionals	27.6%	20.7%	30.8%	23%
Technical workers	29.1%	21.9%	30.2%	23%
Sales	39.5%	28.1%	27.3%	20%
Office and Clerical	31.8%	21.8%	26.4%	19%
Craft workers (skilled)	28.7%	27.1%	35.0%	37%
Operatives (semi skilled)	33.2%	33.4%	42.8%	38%
Laborers	34.9%	34.4%	43.6%	30%
Service workers	40.3%	34.0%	38.1%	19%
All comparisons	34.1%	35.0%	39.0%	23%

§7. BLACK WORKERS MOST SERIOUSLY AFFECTED

Despite the initial focus of the Civil Rights Act on Black workers, and the improvement that has taken place since, Black workers still bear the severest brunt of this discrimination. They constitute less than half of all minority workers reported, but they were 57% of all workers affected by discrimination. Fifteen percent of all Black workers were so affected in 1999, while 11 % of both Hispanics and Asian Pacific workers were affected.

- Thirty five thousand business establishments discriminated against 586,000 Blacks. Ninety percent of these Black workers were affected by establishments that were so far below the average utilization that there was only a 1 in 100 chance that this happened by accident and half by "hard core" employers who had been discriminating for at least nine years.
 - Hispanic workers were 33% of minority workers reported, and they constituted 28% of those affected by discrimination or 283,000 workers.
 - Asian Pacific workers were 17% of the minorities, and 15% -- or nearly 150,000 -- of those affected by discrimination.
 - The data about Native American workers was too sparse to draw conclusions.
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**§8. IMPROVEMENT IN PROPORTION OF MINORITIES AND WOMEN
EMPLOYED BETWEEN 1975 AND 1999**

The bright spot in this study of intentional discrimination, is that between 1975 and 1999, minorities increased their participation in the labor force by 4.6 million workers beyond the increase resulting from economic growth; and women similarly increased their participation by 3.8 million workers. In absolute numbers, minorities went from 4 million workers in 1975 to more than 11 million in 1999; women went from 8 million workers in '75 to 17.5 million in 1999. More important, all groups increased their share of "better jobs" as officials, managers, professionals, technical and sales workers.

**§9. FORTY INDUSTRIES THAT WERE 'EQUAL OPPORTUNITY
DISCRIMINATORS'**

The study identified 40 industries that were "equal opportunity discriminators," discriminating against more than 75% of the Black, Hispanic, Asian, and White Women workers affected by discrimination.

[Continued on next page.]

FORTY INDUSTRIES' INTENTIONAL DISCRIMINATION* AGAINST WOMEN, BLACKS, HISPANICS, AND ASIANS, SHOWING AFFECTED WORKERS** AND DISCRIMINATION RISK BY INDUSTRY***										
SIC	Industry	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS
		#	%Risk	#	%Risk	#	%Risk	#	%Risk	
806	Hospitals	83,806	21%	89,314	41%	19,562	22%	23,719	36%	186,503
581	Eating and Drinking Places	35,370	19%	55,591	43%	43,702	40%	3,530	40%	138,193
531	Department Stores	42,271	22%	50,559	37%	20,615	29%	5,414	31%	119,259
541	Grocery Stores	26,253	14%	53,333	41%	20,681	33%	1,559	24%	103,827
805	Nursing and Personal Care Facilities	13,855	14%	39,429	35%	7,247	34%	5,508	34%	66,049
737	Computer and Data Processing Services	31,114	26%	8,206	26%	1,986	27%	16,837	36%	57,943
701	Hotels and Motels	13,127	17%	17,960	20%	16,651	25%	6,471	32%	50,208
481	Telephone Communication	29,394	30%	19,857	32%	3,654	25%	2,886	33%	55,791
602	Commercial Banks	16,673	18%	20,131	37%	4,006	23%	4,821	30%	47,632
371	Motor Vehicles and Equipment	18,084	32%	14,470	36%	3,206	32%	1,732	37%	37,492
357	Electronic Components and Accessories	11,985	26%	3,001	33%	5,806	23%	11,748	35%	32,522
421	Trucking & Courier Services, Ex. Air	10,119	42%	15,842	35%	5,304	26%	501	32%	31,766
451	Air Transportation, Scheduled	15,651	32%	8,597	30%	4,057	22%	2,768	33%	31,073
336	Miscellaneous Plastics Products	11,109	33%	4,662	33%	7,216	35%	2,559	49%	25,547
514	Groceries and Related Products	11,184	32%	4,783	34%	6,077	32%	534	36%	22,577
809	Health and Allied Services	10,329	24%	8,767	35%	2,063	29%	1,478	32%	20,638
633	Fire, Marine, and Casualty Insurance	7,658	16%	4,012	22%	772	20%	754	32%	13,395
632	Medical Service and Health Insurance	5,733	19%	5,751	28%	914	21%	944	26%	13,341
372	Aircraft and Parts	5,901	28%	1,443	34%	2,811	17%	2,497	35%	12,453
357	Computer and Office Equipment	5,814	27%	1,310	28%	1,056	21%	4,170	32%	12,360
584	Miscellaneous Shopping Goods Stores	8,183	30%	3,218	36%	1,888	33%	819	28%	11,909
621	Security Brokers and Dealers	7,503	24%	2,277	29%	817	23%	1,122	21%	11,723
384	Medical Instruments and Supplies	5,474	25%	1,012	27%	1,821	27%	2,995	31%	11,301
871	Engineering & Architectural Services	6,487	23%	1,792	25%	715	18%	2,235	25%	11,229
504	Professional & Commercial Equipment	6,443	26%	1,884	26%	877	25%	1,632	29%	11,033
369	Communications Equipment	4,500	25%	1,269	20%	878	20%	3,839	36%	10,585
283	Drugs	5,301	23%	1,718	25%	1,185	24%	2,391	31%	10,504
801	Offices & Clinics Of Medical Doctors	4,935	19%	2,987	33%	1,028	22%	1,419	27%	10,370
275	Commercial Printing	4,863	29%	1,984	31%	1,458	31%	818	43%	9,215
201	Meat Products	2,285	32%	1,720	33%	3,517	28%	918	58%	8,439
841	Insurance Agents, Brokers, & Service	3,943	19%	2,766	30%	756	26%	758	25%	8,222
349	Misc. Fabricated Metal Products	3,443	35%	1,511	30%	1,683	29%	835	39%	7,468
836	Residential Gwn	2,481	21%	3,449	33%	854	28%	318	35%	7,163
267	Misc. Conveyed Paper Products	3,505	33%	1,511	30%	1,510	33%	458	44%	6,968
344	Fabricated Structural Metal Products	2,242	37%	1,660	33%	2,476	32%	511	48%	6,888
489	Communication Services	2,533	30%	1,322	27%	1,474	29%	1,414	29%	6,800
271	Newspapers	2,924	19%	2,094	37%	1,016	26%	337	31%	6,372
501	Motor Vehicles, Parts, and Supplies	2,579	29%	1,354	30%	1,010	31%	1,010	31%	5,953
209	Misc. Food and Kindred Products	2,024	32%	1,119	35%	2,091	25%	685	43%	5,930
226	Knitting Mills	1,395	34%	1,043	34%	700	46%	414	59%	3,553
Total affected workers		470,773		463,208		207,186		125,052		1,266,217
31% reduction for minority women included in Women totals		(145,943)								1,120,277
Percent of all affected Workers		75%		79%		73%		84%		77%
* Discrimination 1.85 or more standard deviations.										
**Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average.										
***Risk based on proportion of comparisons of establishments in same labor market and occupation.										

Additional highlights of the Study include:

- The largest number of establishments discriminating against both minorities and women employed between 100 and 500 workers. 22,000 establishments of that size discriminated against minorities, 20,000 against women. These establishments contributed about half the intentional job discrimination against both minorities and women.
- Separate studies for each state and each metropolitan area where there is data are included in the nationwide study. "Discrimination, like politics, is essentially local," the study states. "We hope this material will be studied by

those interested in civil rights to try to address this discrimination in each state and metro area.”

§10. AFFIRMATIVE ACTION STILL NECESSARY

The study concludes that intentional discrimination is still so pervasive that affirmative action programs continue to be necessary. “It is impossible to address the 75,000 establishments through formal law enforcement efforts. Congress was right in 1964 to make voluntary action the preferred means of improving opportunity for minorities and women, and it was right when it reaffirmed that principle in 1991.” Affirmative action programs are intended to allow employers who have reason to be concerned that they might be discriminating to take steps to correct their practices.

The statistics from this study will be helpful to all groups concerned with employment discrimination, the Study concludes. Employers would like to know where they stand compared to others; enforcement agencies and courts may use the information and those interested in civil rights can measure progress using the data. However, the Blumrosens doubt that the Federal Government, under either a Republican or Democratic administration is likely to use the study in ways they have suggested.

To address the needs of employers and workers, the Blumrosens have incorporated as EEO1.Inc., to make information available without identifying the names and addresses of any employer. The Study will be published on the web site, EEO1.com. This site will also include a program, the Discrimination Calculator, to enable workers and their representatives to find the likelihood of discrimination in labor markets, industries and occupations of interest to them without cost. Employers who are interested in comparative data and others who are entitled to it, may consult EEO1.com to find out how to obtain such data.

§11. RECOMMENDATIONS

1. **Employers** should demand access to information that will tell them where they stand compared to similar employers so that they can decide whether to take affirmative action; they should insist that they be free to take such action whenever the statistics warrant it. Industries that exhibit serious discrimination should establish programs to assist their members whose employment practices tarnish the industry reputation.
 2. **The Federal Government** should provide statistical information to employers so that they will know where they stand; adopt a five year enforcement program
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based on the statistical analysis and incorporate state and local government efforts, focusing on the 40 and 206 industries identified in the Study, and seeking increased employment, leaving litigation over damages to the private bar. They should also extend the reporting requirement to all establishments with 50 or more employees.

3. **Congress** should mandate these federal programs, and provide additional funding to proceed against the 206 industries, and extend the reporting requirements to identify the age of employees, to facilitate enforcement of the age discrimination act.
 4. **The Federal Courts** should recognize the prevalence of intentional job discrimination in constitutional and statutory decisions on affirmative action; reconsider the assumption that employers are likely to adopt rigid programs without individualized proof that such was the case and recognize that intentional discrimination appears to reflect the unwillingness of roughly one third of establishments to work with people who are not "White."
 5. **State and Local Civil Rights Agencies** should secure EEO-1 data, urge interested groups to examine this study and initiate actions in their state based on the information. In addition, they should cooperate with the federal and other state agencies in enforcement programs; support affirmative action where statistics justify it, and encourage state and federal legislative leaders to address the prevalence of intentional discrimination as identified in this study.
 6. **Civil Rights and Women's organizations** should use this study in public discussions of discrimination; cooperate with each other in legislative and other public affairs because they have a mutual interest in eliminating job discrimination, particularly in the 40 industries that discriminate against all the groups they represent; evaluate government programs more by how many jobs are obtained and less by how many cases are processed, or how many dollars individual workers obtain; demand a focused set of governmental programs to address the 40/206 industries, and support expansion of the EEO-1 reports to the age act and all establishments of 50 or more workers.
 7. **Lawyers for both workers and employers** should develop a fair arbitration system for dealing with individual discrimination cases, so that resources can be focused on patterns or practices of discrimination.
 8. **Universities, colleges, high schools and research oriented institutions** should make use of this study in research activities, and should integrate this study into the work of other disciplines concerned with labor relations and human behavior.
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§12. ENDNOTES

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1. Interview on "60 Minutes" by Mike Wallace, Aug.2, 1998, transcript, p. 22.
 2. Sec. 703 (m) of Title VII.

CHAPTER 15
DISCRIMINATION BY INDUSTRIES –
FORTY, TWO HUNDRED SIX, AND A PEEK AT THE FUTURE

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Establishments where people work have been the central focus of industries in this report. No matter how centralized management may be, serious employment decisions almost always involve the input of local management; the extent of control that a multi-establishment firm exercises will depend on many different factors, some of which involve the personalities of managers at the establishment and in headquarters. Future research may examine these issues. The national part of this study will end with the identification of those industries that, establishment by establishment, have contributed to virtually all of the affected workers who have been identified. Those who examine the individual group reports in Part II of this study, or the State Reports in Part III, will recognize many of these industries because they appear prominently in those reports as well.

[Continued on next page.]

Table 1. Forty Biggest Industries with Intentional Job Discrimination

FORTY INDUSTRIES' INTENTIONAL DISCRIMINATION* AGAINST WOMEN, BLACKS, HISPANICS, AND ASIANS, SHOWING AFFECTED WORKERS** AND DISCRIMINATION RISK BY INDUSTRY***										
SIC	Industry	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS
		#	%Risk	#	%Risk	#	%Risk	#	%Risk	
806	Hospitals	63,908	21%	89,314	41%	19,562	22%	23,719	36%	196,503
581	Eating and Drinking Places	35,370	19%	55,591	43%	43,702	40%	3,530	41%	138,193
531	Department Stores	42,271	22%	50,959	37%	20,615	29%	5,414	31%	119,259
541	Grocery Stores	28,253	14%	53,333	41%	20,681	33%	1,559	24%	103,827
805	Nursing and Personal Care Facilities	13,855	14%	39,429	35%	7,247	34%	5,508	34%	66,049
737	Computer and Data Processing Services	31,114	26%	8,206	28%	1,986	27%	16,637	36%	57,943
701	Hotels and Motels	13,127	17%	17,960	29%	18,651	25%	6,471	32%	56,208
481	Telephone Communication	29,394	30%	19,857	32%	3,654	25%	2,886	33%	55,791
602	Commercial Banks	18,673	18%	20,131	37%	4,006	23%	4,821	31%	47,632
371	Motor Vehicles and Equipment	18,034	32%	14,470	36%	3,206	32%	1,732	37%	37,492
367	Electronic Components and Accessories	11,965	26%	3,001	33%	5,808	23%	11,748	35%	32,522
421	Trucking & Courier Services, Ex. Air	10,119	42%	15,842	35%	5,304	26%	501	32%	31,766
451	Air Transportation, Scheduled	15,651	32%	8,597	30%	4,057	22%	2,768	32%	31,073
308	Miscellaneous Plastics Products	11,139	33%	4,662	33%	7,216	35%	2,559	46%	25,547
514	Groceries and Related Products	11,134	32%	4,783	34%	6,077	32%	534	36%	22,577
809	Health and Allied Services	10,329	21%	6,767	35%	2,063	29%	1,478	32%	20,638
633	Fire, Marine, and Casualty Insurance	7,858	18%	4,012	22%	772	20%	754	32%	13,395
632	Medical Service and Health Insurance	5,733	19%	5,751	28%	914	21%	944	20%	13,341
372	Aircraft and Parts	5,931	29%	1,443	34%	2,611	17%	2,497	35%	12,453
357	Computer and Office Equipment	5,814	27%	1,310	28%	1,066	21%	4,170	32%	12,360
594	Miscellaneous Shopping Goods Stores	6,136	20%	3,216	36%	1,888	33%	819	26%	11,909
621	Security Brokers and Dealers	7,506	21%	2,277	29%	617	23%	1,122	21%	11,723
384	Medical Instruments and Supplies	5,474	25%	1,012	27%	1,821	27%	2,995	31%	11,301
871	Engineering & Architectural Services	6,487	23%	1,792	25%	715	18%	2,235	25%	11,229
504	Professional & Commercial Equipment	6,440	26%	1,984	26%	977	25%	1,632	25%	11,033
366	Communications Equipment	4,500	25%	1,269	20%	978	20%	3,839	31%	10,585
283	Drugs	5,301	23%	1,718	25%	1,185	24%	2,301	31%	10,504
801	Offices & Clinics Of Medical Doctors	4,936	19%	2,987	33%	1,028	22%	1,419	27%	10,370
275	Commercial Printing	4,859	28%	1,984	31%	1,486	31%	878	43%	9,216
201	Meat Products	2,236	32%	1,720	33%	3,517	28%	916	56%	8,439
641	Insurance Agents, Brokers, & Service	3,943	19%	2,768	30%	756	25%	756	25%	8,222
349	Misc. Fabricated Metal Products	3,440	35%	1,511	30%	1,683	29%	835	35%	7,469
836	Residential Care	2,431	21%	3,449	33%	854	28%	378	35%	7,163
267	Misc. Converted Paper Products	3,535	33%	1,511	30%	1,516	33%	456	44%	6,988
344	Fabricated Structural Metal Products	2,242	37%	1,660	33%	2,476	32%	511	46%	6,888
489	Communication Services	2,530	30%	1,322	27%	1,474	29%	1,474	25%	6,800
271	Newspapers	2,924	19%	2,094	37%	1,016	26%	337	31%	6,372
501	Motor Vehicles, Parts, and Supplies	2,579	29%	1,354	30%	1,010	31%	1,010	31%	5,953
209	Misc. Food and Kindred Products	2,024	32%	1,119	35%	2,091	25%	895	45%	5,930
225	Knitting Mills	1,336	34%	1,043	34%	700	46%	414	55%	3,553
Total affected workers		470,773		463,206		207,186		125,052		1,266,217
31% reduction for minority women included in Women totals		(145,940)								1,120,277
Percent of all affected Workers		75%		79%		73%		84%		77%
* Discrimination 1.65 or more standard deviations.										
**Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average.										
***Risk based on proportion of comparisons of establishments in same labor market and occupation.										

§2. THE TWO HUNDRED AND SIX INDUSTRIES THAT DISCRIMINATE EXTENSIVELY AGAINST WOMEN, BLACK AND HISPANIC WORKERS.

It is not extraordinary to find Women discriminated against when Blacks are, because women constitute 55% of Black workers; nor is it extraordinary to find women discriminated against when Hispanics are, because they constitute 43% of Hispanic Workers. It is extraordinary to find that most of the industries that discriminate against one or the other discriminate against both! We believe that this finding has implications for enforcement of EEO laws, and for the relationship between those who focus on the activities of civil rights groups.

Table 2. 206 Industries that Intentionally Discriminate against Women, Black & Hispanic Workers

TWO HUNDRED & SIX INDUSTRIES' INTENTIONAL JOB DISCRIMINATION* AGAINST WOMEN, BLACKS, & HISPANIC WORKERS, RANKED BY TOTAL NUMBER OF AFFECTED WORKERS**, SHOWING RISK OF DISCRIMINATION IN THE INDUSTRY*** & AFFECTED WORKERS IN EACH GROUP. ****								
SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	
806	Hospitals	63,908	21%	89,314	41%	19,562	22%	172,784
581	Eating & Drinking Places	35,370	19%	55,591	43%	43,702	40%	134,663
531	Department Stores	42,271	22%	50,959	37%	20,615	29%	113,845
541	Grocery Stores	28,253	14%	53,333	41%	20,681	33%	102,267
805	Nursing & Personal Care Facilities	13,865	14%	39,429	35%	7,247	34%	60,541
481	Telephone Communication	29,394	30%	19,857	32%	3,654	25%	52,905
701	Hotels & Motels	13,127	17%	17,960	29%	18,651	25%	49,737
602	Commercial Banks	18,673	18%	20,131	37%	4,006	23%	42,811
737	Computer & Data Processing Svcs.	31,114	26%	8,206	28%	1,986	27%	41,306
371	Motor Vehicles & Equip.	18,084	32%	14,470	36%	3,206	32%	35,760
421	Trucking & Courier Svcs., Ex. Air	10,119	42%	15,842	35%	5,304	26%	31,265
451	Air Transport., Scheduled	15,651	32%	8,597	30%	4,057	22%	28,305
308	Miscellaneous Plastics Prods.	11,109	33%	4,662	33%	7,216	35%	22,987
514	Groceries & Related Prods.	11,184	32%	4,783	34%	6,077	32%	22,043
367	Electronic Components & Acc.	11,965	26%	3,001	33%	5,808	23%	20,774
809	Health & Allied Svcs.	10,329	21%	6,767	35%	2,063	29%	19,160
533	Variety Stores	5,326	17%	9,924	34%	2,638	24%	17,888
633	Fire, Marine, & Casualty Ins.	7,858	18%	4,012	22%	772	20%	12,641
632	Med. Service & Health Ins.	5,733	19%	5,751	28%	914	21%	12,397
873	Research & Testing Svcs.	9,130	28%	1,926	27%	589	23%	11,645
594	Miscellaneous Shopping Goods Stores	6,186	30%	3,216	36%	1,888	33%	11,290
621	Security Brokers & Dealers	7,506	21%	2,277	29%	817	23%	10,600
372	Aircraft & Parts	5,901	29%	1,443	34%	2,611	17%	9,955

TWO HUNDRED & SIX INDUSTRIES' INTENTIONAL JOB DISCRIMINATION* AGAINST WOMEN, BLACKS, & HISPANIC WORKERS, RANKED BY TOTAL NUMBER OF AFFECTED WORKERS, SHOWING RISK OF DISCRIMINATION IN THE INDUSTRY*** & AFFECTED WORKERS IN EACH GROUP. ******

SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	
521	Lumber & Other Building Materials	1,973	14%	5,551	37%	1,942	28%	9,466
504	Professional & Commercial Equip.	6,440	26%	1,984	26%	977	25%	9,401
871	Engineering & Architectural Svcs.	6,487	23%	1,792	25%	715	18%	8,994
801	Offices & Clinics Of Med. Doctors	4,936	19%	2,987	33%	1,028	22%	8,951
275	Commercial Printing	4,869	29%	1,984	31%	1,466	31%	8,339
384	Med. Instruments & Supplies	5,474	25%	1,012	27%	1,821	27%	8,307
631	Life Ins.	4,649	25%	2,972	31%	606	25%	8,227
283	Drugs	5,301	23%	1,718	25%	1,185	24%	8,204
357	Computer & Office Equip.	5,814	27%	1,310	28%	1,066	21%	8,190
422	Public Warehousing & Storage	4,285	40%	2,414	28%	1,482	35%	8,181
201	Meat Prods.	2,286	32%	1,720	33%	3,517	28%	7,523
641	Ins. Agents, Brokers, & Service	3,943	19%	2,768	30%	756	25%	7,466
751	Automotive Rentals, No Drivers	2,813	31%	2,805	31%	1,351	32%	6,968
836	Residential Care	2,481	21%	3,449	33%	854	28%	6,784
366	Communications Equip.	4,500	25%	1,269	20%	978	20%	6,747
491	Electric Svcs.	3,814	28%	2,295	29%	533	18%	6,641
811	Legal Svcs.	4,246	18%	1,874	21%	519	20%	6,639
267	Misc. Converted Paper Prods.	3,505	33%	1,511	30%	1,516	33%	6,532
832	Individual & Family Svcs.	1,636	19%	3,630	35%	1,137	32%	6,432
344	Fabricated Structural Metal Prods.	2,242	37%	1,660	33%	2,476	32%	6,377
205	Bakery Prods.	2,956	38%	1,677	32%	1,733	26%	6,355
349	Misc. Fabricated Metal Prods.	3,440	35%	1,174	33%	1,683	29%	6,297
346	Metal Forgings & Stampings	2,498	37%	2,338	40%	1,382	26%	6,218
808	Home Health Care Svcs.	1,535	15%	3,465	32%	1,077	35%	6,076
271	Newspapers	2,924	19%	2,094	37%	1,016	26%	6,035
208	Beverages	2,381	35%	2,004	25%	1,541	24%	5,925
382	Measuring & Controlling Devices	4,316	26%	706	28%	799	24%	5,821
872	Accounting, Auditing, & Bookkeeping	4,123	18%	1,081	22%	156	19%	5,360
489	Communication Svcs.	2,530	30%	1,322	27%	1,474	29%	5,326
209	Misc. Food & Kindred Prods.	2,024	32%	1,119	35%	2,091	25%	5,235
864	Civic & Social Associations	1,207	16%	3,019	47%	865	30%	5,091
539	Misc. General mdse. Stores	1,559	15%	2,170	33%	1,354	22%	5,082
501	Motor Vehicles, Parts, & Supplies	2,579	29%	1,354	30%	1,010	31%	4,943
265	Paperboard Containers & Boxes	2,094	35%	1,384	26%	1,434	27%	4,911
203	Preserved Fruits & Vegetables	1,938	32%	478	34%	2,469	25%	4,885
415	School Buses	1,413	25%	2,670	52%	596	49%	4,680
484	Cable & Other Pay TV Svcs.	1,366	19%	2,536	36%	658	20%	4,559
331	Blast Furnace & Basic Steel Prods.	1,145	41%	1,758	35%	1,537	30%	4,441
251	Household Furniture	1,888	24%	1,104	32%	1,261	43%	4,252

*

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SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	
596	Nonstore Retailers	2,054	32%	1,319	35%	755	34%	4,128
506	Electrical Goods	2,664	26%	618	25%	768	23%	4,050
573	Radio, TV, & Computer Stores	1,341	18%	1,914	27%	678	22%	3,932
356	General Industrial Machinery	2,189	32%	617	25%	1,011	30%	3,817
591	Drug Stores & Proprietary Stores	925	11%	2,021	40%	816	32%	3,761
653	Real Estate Agents & Managers	1,744	26%	1,096	33%	856	33%	3,696
833	Job Training & Related Svcs.	1,250	22%	1,902	37%	418	34%	3,570
284	Soap, Cleaners, & Toilet Goods	1,875	30%	900	28%	698	23%	3,473
483	Radio & TV Broadcasting	1,340	15%	940	20%	1,131	24%	3,411
565	Family Clothing Stores	1,175	20%	1,577	40%	619	28%	3,371
364	Electric Lighting & Wiring Equip.	1,699	31%	664	35%	1,008	29%	3,371
459	Airports, Flying Fields, & Svcs.	1,089	34%	1,253	33%	982	31%	3,325
225	Knitting Mills	1,396	34%	1,043	34%	700	46%	3,139
508	Machinery, Equip., & Supplies	1,884	29%	404	28%	790	24%	3,077
154	Nonresidential Building Construction	915	28%	719	25%	1,415	31%	3,049
401	Railroads	567	38%	1,640	27%	833	31%	3,040
783	Motion Picture Theaters	402	12%	1,747	42%	882	42%	3,032
616	Mortgage Bankers & Brokers	1,255	19%	1,314	26%	411	20%	2,981
162	Heavy Construction, except Highway	364	33%	850	33%	1,675	29%	2,889
358	Refrigeration & Service Machinery	1,455	32%	724	33%	694	23%	2,874
732	Credit Reporting & Collection	1,019	25%	1,454	39%	284	36%	2,757
335	Nonferrous Rolling & Drawing	1,252	32%	642	36%	701	28%	2,595
354	Metalworking Machinery	1,635	31%	571	32%	329	31%	2,536
551	New & Used Car Dealers	794	14%	686	20%	1,015	20%	2,495
495	Sanitary Svcs.	330	31%	1,186	28%	967	27%	2,483
615	Business Credit Institutions	1,076	19%	1,110	34%	257	19%	2,443
569	Misc. Apparel & Accessory Stores	693	14%	1,226	32%	521	28%	2,441
839	Social Svcs.	674	21%	1,498	36%	267	21%	2,439
138	Oil & Gas Field Svcs.	849	30%	450	31%	864	22%	2,163
733	Mailing, Reproduction, Stenographic	1,039	27%	634	31%	401	33%	2,074
362	Electrical Industrial Apparatus	1,122	24%	418	35%	519	25%	2,059
571	Furniture & Homefurnishings Stores	1,014	23%	753	31%	251	31%	2,027
282	Plastics Materials & Synthetics	1,263	24%	595	21%	160	40%	2,017
369	Misc. Electrical Equip. & Supplies	1,033	24%	459	32%	498	25%	1,990
327	Concrete, Gypsum, & Plaster Prods.	136	31%	592	33%	1,253	26%	1,981
807	Med. & Dental Laboratories	980	21%	704	32%	308	19%	1,972
272	Periodicals	1,257	22%	588	30%	57	32%	1,902
202	Dairy Prods.	1,036	42%	344	33%	518	31%	1,899
206	Sugar & Confectionery Prods.	662	28%	440	38%	765	22%	1,866

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SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	
332	Iron & Steel Foundries	495	37%	732	31%	589	33%	1,816
603	Savings Institutions	693	17%	983	31%	113	23%	1,789
511	Paper & Paper Prods.	1,056	25%	384	20%	270	23%	1,710
492	Gas Production & Distribution	803	22%	674	28%	228	20%	1,705
228	Yarn & Thread Mills	681	27%	611	32%	402	49%	1,694
373	Ship & Boat Building & Repairing	354	38%	1,217	39%	96	21%	1,667
131	Crude Petroleum & Natural Gas	1,100	24%	370	25%	90	25%	1,561
614	Personal Credit Institutions	636	20%	751	34%	134	21%	1,521
274	Miscellaneous Publishing	930	21%	432	27%	131	24%	1,493
239	Misc. Fabricated Textile Prods.	525	26%	228	36%	727	35%	1,480
493	Combination Utility Svcs.	811	24%	517	23%	147	17%	1,474
355	Special Industry Machinery	685	29%	323	31%	465	31%	1,473
281	Industrial Inorganic Chemicals	830	25%	483	19%	158	32%	1,471
512	Drugs, Proprietarys, & Sundries	1,036	24%	216	22%	178	33%	1,431
342	Cutlery, Handtools, & Hardware	731	34%	209	31%	476	32%	1,416
513	Apparel, Piece Goods, & Notions	957	28%	167	31%	275	29%	1,399
336	Nonferrous Foundries (castings)	500	34%	415	43%	481	23%	1,397
243	Millwork, Plywood & Structural Members	483	27%	288	42%	615	40%	1,386
507	Hardware, Plumbing & Heating Equip.	779	30%	292	27%	289	24%	1,360
273	Books	893	22%	341	29%	111	25%	1,344
173	Electrical Work	451	36%	499	27%	354	20%	1,304
252	Office Furniture	664	22%	183	27%	444	28%	1,291
862	Professional Organizations	671	20%	553	29%	41	24%	1,265
473	Freight Transport. Arrangement	553	21%	444	33%	225	25%	1,222
222	Broadwoven Fabric Mills, Manmade	479	29%	646	25%	71	55%	1,196
351	Engines & Turbines	868	47%	275	27%	40	15%	1,183
411	Local & Suburban Transport.	436	27%	516	34%	222	25%	1,175
518	Beer, Wine, & Distilled Beverages	303	23%	263	23%	571	24%	1,137
262	Paper Mills	744	28%	246	21%	135	15%	1,124
353	Construction & Related Machinery	427	22%	325	32%	365	25%	1,116
636	Title Ins.	584	20%	311	33%	171	17%	1,067
781	Motion Picture Production & Svcs.	702	29%	115	14%	240	19%	1,057
171	Plumbing, Heating, Air-conditioning	156	26%	293	22%	586	30%	1,035
359	Industrial Machinery	589	33%	118	34%	327	42%	1,034
394	Toys & Sporting Goods	518	30%	91	31%	393	24%	1,001
472	Passenger Transport. Arrangement	625	20%	266	31%	104	28%	995
345	Screw Machine Prods., Bolts, Etc.	567	30%	223	31%	198	24%	987
291	Petroleum Refining	683	25%	186	19%	100	14%	969
161	Highway & Street Construction	88	20%	310	23%	540	26%	939

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SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	
306	Fabricated Rubber Prods.	530	39%	200	40%	193	48%	923
361	Electric Distribution Equip.	614	27%	166	27%	118	21%	898
204	Grain Mill Prods.	429	33%	246	26%	218	26%	893
599	Retail Stores	492	24%	182	35%	208	29%	883
347	Metal Svcs.	301	36%	189	37%	336	38%	827
289	Miscellaneous Chemical Prods.	413	25%	300	27%	111	33%	824
386	Photographic Equip. & Supplies	741	40%	65	19%	9	42%	816
365	Household Audio & Video Equip.	258	27%	144	26%	411	14%	813
559	Automotive Dealers	173	17%	287	31%	346	18%	806
322	Glass & Glassware, Pressed Or Blown	446	29%	225	30%	114	24%	784
672	Investment Offices	625	27%	122	17%	35	13%	782
232	Men's & Boys' Furnishings	448	28%	116	31%	213	24%	777
671	Holding Offices	541	25%	203	28%	32	28%	776
381	Search & Navigation Equip.	501	21%	70	17%	152	13%	723
655	Subdividers & Developers	298	21%	244	34%	151	29%	694
606	Credit Unions	248	16%	288	24%	157	20%	692
285	Paints & Allied Prods.	332	29%	225	23%	127	23%	684
516	Chemicals & Allied Prods.	279	28%	238	33%	126	44%	643
261	Pulp Mills	334	33%	77	33%	214	27%	625
794	Commercial Sports	230	28%	208	35%	174	40%	612
233	Women's & Misses' Outerwear	257	20%	63	21%	289	29%	609
152	Residential Building Construction	343	17%	53	18%	209	24%	605
554	Gasoline Service Stations	106	14%	189	38%	306	31%	600
343	Plumbing & Heating, except Electric	266	36%	140	44%	189	24%	595
505	Metals & Minerals, except Petroleum	155	18%	229	27%	209	27%	593
227	Carpets & Rugs	277	30%	173	32%	139	48%	589
866	Religious Organizations	231	16%	272	33%	85	23%	588
376	Guided Missiles, Space Vehicles, Parts	292	28%	69	16%	211	14%	573
841	Museums & Art Galleries	237	21%	229	34%	93	27%	560
423	Trucking Terminal Facilities	62	47%	325	20%	171	34%	558
286	Industrial Organic Chemicals	311	23%	152	14%	37	32%	499
863	Labor Organizations	218	22%	264	31%	16	20%	498
363	Household Appliances	184	39%	220	50%	92	39%	496
211	Cigarettes	223	30%	192	25%	46	17%	462
502	Furniture & Homefurnishings	214	28%	47	17%	199	25%	460
341	Metal Cans & Shipping Containers	147	36%	150	34%	153	29%	451
305	Hose & Belting & Gaskets & Packing	246	37%	100	31%	89	29%	436
762	Electrical Repair Shops	140	30%	191	29%	76	31%	407
229	Miscellaneous Textile Goods	178	31%	167	22%	57	58%	403

Affected Workers are the difference between observed utilization at 2 standard deviations below average in Labor market & occupation, & the average utilization in labor market & occupation

Risk of discrimination is based on comparisons of establishments in same labor market & occupations

Black & Hispanic Women = 25% of Women. Total affected workers reduced by 162,084 to avoid overlap.

The Bureau of Labor Statistics in the Department of Labor has predicted when the job growth will be the greatest between 1999 and 2008.

Table 3. Medical, Drug and Health Related Industries.

MEDICAL, DRUG AND HEALTH RELATED INDUSTRIES' INTENTIONAL JOB DISCRIMINATION** AGAINST WOMEN, BLACK, HISPANIC, AND ASIANS, SHOWING AFFECTED WORKERS*** AND RISK OF DISCRIMINATION BY INDUSTRY****										
SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		ASIAN PAC		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	#	Rsk	
906	Hospitals	63,908	21%	89,314	41%	19,562	22%	23,719	36%	196,503
905	Nurs. & Prsnl Care Fac.	13,865	14%	39,429	35%	7,247	34%	5,508	34%	66,049
909	Health & Allied Services	10,329	21%	6,767	35%	2,063	29%	1,478	32%	20,638
632	Med. Svc & Health Ins.	5,733	19%	5,751	28%	914	21%	944	26%	13,341
384	Med. Instrumnts & Sppls	5,474	25%	1,012	27%	1,821	27%	2,995	31%	11,301
283	Drugs	5,301	23%	1,718	25%	1,185	24%	2,301	31%	10,504
801	Offices & Clinics Of MDs	4,936	19%	2,987	33%	1,028	22%	1,419	27%	10,370
836	Residential Care	2,481	21%	3,449	33%	854	28%	2,378	35%	9,162
908	Home Health Care Svcs	1,535	15%	3,465	32%	1,077	35%	183	30%	6,259
591	Drug & Proprietary Stores	925	11%	2,021	40%	816	32%	363	26%	4,124
512	Drugs, Proprieties & Sundries	1,036	24%	216	22%	178	33%	164	33%	1,595
307	Med. & Dental Laboratories	960	21%	704	32%	308	19%	620	32%	2,592
835	Child Day Care Services	38	16%	158	44%	87	27%	26	35%	310
Affected Workers in above SICs		116,522		156,990		37,140		42,096		352,748
*31% reduction in women's total to avoid overlap with minority women who are included in minority totals										(36,122)
										316,626
All affected workers		628,395		586,711		283,150		149,214		1,611,348
% of total affected workers		19%		27%		13%		28%		20%

** Discrimination 1.65 or more standard deviations.

***Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average.

****Risk based on proportion of comparisons of establishments in same labor market, industry and occupation.

TWENTY PERCENT OF ALL AFFECTED WORKERS ARE IN THESE MEDICAL, DRUG AND HEALTH RELATED INDUSTRIES. THESE ARE AMONG THE FASTEST GROWING INDUSTRIES.

IN 1999, THE BUREAU OF LABOR STATISTICS PREDICTED JOB GROWTH IN THIS GROUP OF INDUSTRIES AT MORE THAN 1,400,000 WORKERS BY YEAR 2008. See Statistical Abstract of US, 2001 Table 594 at p. 383

Table 4. Computer Related Industries

COMPUTER RELATED INDUSTRIES' INTENTIONAL JOB DISCRIMINATION** AGAINST WOMEN, BLACK, HISPANIC, AND ASIANS, SHOWING AFFECTED WORKERS*** AND RISK OF DISCRIMINATION BY INDUSTRY****										
SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		ASIAN PAC		AFFECTED WORKERS
		#	Rsk	#	Rsk	#	Rsk	#	Rsk	
737	Computer and Data Processing Services	31,114	26%	8,206	28%	1,986	27%	16,637	36%	57,943
357	Computer and Office Equipment	5,814	27%	1,310	28%	1,066	21%	4,170	32%	12,360
		36,928		9,516		3,052		20,807		70,303
										-11,448
										58,855
** Discrimination 1.65 or more standard deviations.										
***Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average.										
****Risk based on proportion of comparisons of establishments in same labor market, industry and occupation.										
THESE ARE AMONG THE FASTEST GROWING INDUSTRIES.										
IN 1999, THE BUREAU OF LABOR STATISTICS PREDICTED JOB GROWTH IN THIS GROUP										
OF INDUSTRIES AT MORE THAN 1,700,000 WORKERS BY YEAR 2008.										
See Statistical Abstract of US, 2001, Table 594 at p. 383										
The small number of affected workers, compared to the medical, drug and health industries, may reflect recruiting problems during the industry's development. The methodology of this study cannot address claims of discrimination in recruitment or hiring until the industry itself has employed sufficient numbers of minorities or women to enable those establishments 2 or more standard deviations below the average to be identified. See Part 1, Ch. 5, Sec. 1.										

Whether the job growth in these industries will be more cognizant of the knowledge, skills and abilities of the "affected workers" will depend in part on the actions of the government and employers that are discussed in the next chapter.

EXHIBIT 2



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LATINO POLICY & ISSUES BRIEF

N O. 2 M A Y 2 0 0 2

READY FOR PRIME TIME: Minorities on Network Entertainment Television

by Dr. Chon A. Noriega
UCLA Department of Film, Television, and Digital Media

Despite the well-documented growth of racial minorities as a demographic, political, and market force within the United States, this population enters the twenty-first century with a lower level of media access and representation than since the civil rights era.

The cause can be traced to two factors: first, the slow rate of improvement in minority employment in the film and television entertainment industry; and second, the exponential increase in the minority population, such that "minorities" now make up the majority population in California and other areas (see fig. 1).

While minority employment figures have shown slight improvement over the last three decades, communities of color have grown from 16.4 percent of the national population in 1970 to 36.9 percent in 2000 (Bahr et al. 1979; U.S. Bureau of the Census 2002). In other words, this population has nearly doubled relative to the national population; and the Latino population alone has nearly tripled (4.5 percent in 1970 to 12.5 percent in 2000). To the extent that the entertainment industry has not kept pace with changing demographics, employment opportunities for racial minorities have actually *decreased* relative to the level of the 1970s. In other words, there are nearly twice as many people of color encountering roughly the same rate of employment.

FINDINGS ABOUT UNDERREPRESENTATION

This report focuses on network television since it reaches all television viewers, unlike cable, thereby providing one of the most powerful bases for a common national culture. While Americans go to the movies fewer than a dozen times in a year, most viewers spend almost as much time in front of the television as workers do

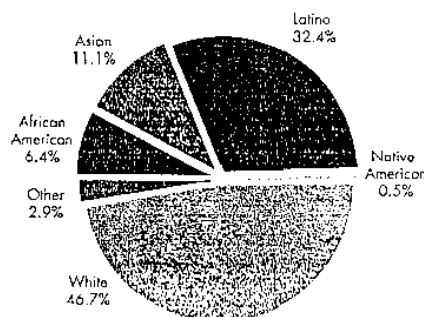


Fig. 1. Ethnic Groups as Percentage of California Population (Source: US Census Bureau 2000)

on the job in any given week. For racial minorities, representation on prime time plays an important role in shaping the views and opinions of millions of viewers tuned in to watch television every night. In addition to the portrayal of minorities in television shows, a related issue is that of equal opportunity and access to prime-time television for minority actors, writers, directors, producers, and executives.

In the past two years, cable and public television have been somewhat more responsive to demographic changes, producing series and specials directed at African American and Latino audiences. But racial minorities remain scarce at the four major broadcast networks: ABC, CBS, Fox, and NBC. Recent studies by the Directors Guild of America (see Braxton 2002), National Association for the Advancement of Colored People (August 2001), Children Now (September 2000), and the Tomás Rivera

Policy Institute (May 2000) reinforce this point.

In a preliminary analysis of prime-time series during 2001-2002, the UCLA Chicano Studies Research Center noted significant improvement in front of the camera, with racial minorities now filling 28.3 percent of regular and recurring roles on the four networks (see fig. 2). While the overall number is close to the national demographic of 30.9 percent, Latinos and Native Americans are represented at a rate less than half of their population. Furthermore, minority actors tend to be concentrated in a limited number of series. For example, *The George Lopez Show* accounts for one-third of Latino regular and recurring roles on ABC. Cancellation of these series could mean a significant decrease in overall minority employment.

Behind the camera, and in the executive suite, racial minorities continue to be significantly underrepresented. Minority directors are employed on a mere 4.5 percent of the episodes for series on the four networks (see fig. 3). While all groups were underrepresented on all networks, the situation was notably worse from some groups. No Native American directors were hired during the 2001-2002 season. ABC and NBC did not hire any Latino directors. While its numbers were also low, Fox nevertheless accounted for 57.6 percent of all minority hires among directors.

Minority writers make up 6.9 percent of series writers (see fig. 4). Again, all groups were underrepresented on all networks. African American and Asian American writers were hired at a rate about one-third of their national demographic. Latinos and Native Americans were hired at a rate about one-seventh of their national demographic. While its numbers were also low, Fox hired twenty-three minority writers, twice as many as each of the other three networks.

Fig. 2. ACTORS ON PRIME TIME 2001-2002
Percent of Recurring and Regular Roles by Network

	ABC	CBS	FOX	NBC	TOTAL
African Americans	18.8	23.0	20.1	12.1	18.3
Asian Americans	1.3	3.9	5.4	4.8	3.8
Latinos	7.1	5.5	7.1	4.4	5.9
Native Americans	0.4	0.0	0.4	0.0	0.2
TOTAL MINORITY	27.6	32.4	33.0	21.3	28.2

Fig. 3. DIRECTORS ON PRIME TIME 2001-2002
Percent of Episodes Directed by Network

	ABC	CBS	FOX	NBC	TOTAL
African Americans	1.0	2.7	3.4	2.0	2.2
Asian Americans	0.0	0.6	5.8	0.3	1.5
Latinos	0.0	0.9	2.4	0.0	0.8
Native Americans	0.0	0.0	0.0	0.0	0.0
TOTAL MINORITY	1.0	4.2	11.6	2.3	4.5

Fig. 4. WRITERS ON PRIME TIME 2001-2002
Percent of Positions by Network

	ABC	CBS	FOX	NBC	TOTAL
African Americans	2.6	2.4	7.1	4.1	4.0
Asians Americans	1.0	0.5	1.6	1.4	1.1
Latinos	1.5	2.4	3.3	0.0	1.7
Native Americans	0.0	0.0	0.5	0.0	0.1
TOTAL MINORITY	5.1	5.3	12.5	5.5	6.9

Fig. 5. NETWORK EXECUTIVES IN CHARGE OF PROGRAMMING
2001-2002
Number of Department Directors and Higher

	ABC	CBS	FOX	NBC	TOTAL
African Americans	0	0	0	0	0
Asian Americans	2	1	1	1	5
Latinos	0	2	0	0	2
Native Americans	0	0	0	0	0
TOTAL MINORITY	2	3	1	1	7
TOTAL POSITIONS AVAILABLE	31	40	21	27	119

Most analysts agree that change within the networks must come from the executive ranks, in particular those positions that have some responsibility over content, from production to scheduling. Minority executives in charge of programming account for seven positions or 5.9 percent of the 119 positions across the four networks (see fig. 5). These positions include department directors and higher. There were no African American and Native American executives included among these positions. Each network, however, has hired an African American executive as vice president of diversity, although these positions do not have a direct involvement in programming.

NEED FOR RESEARCH

The above data confirm earlier reports about underrepresentation behind the camera. To date, such reports have been unable to do more than present employment statistics and provide anecdotal information about discrimination in hiring practices and the work environment. By their very nature such studies cannot identify underlying causes and potential solutions. Their main purpose is to identify and draw attention to the problem.

For its part, the entertainment industry claims that it operates by economic rationale alone, citing ratings and box office as the major factors affecting decision making. But network television has an extraordinarily high failure rate: At least 75 percent of new series are cancelled in their first season. In the absence of a formula for success, the industry has invented one, going with the actors, producers, and formats it already knows. These do not provide a higher success rate, but they do provide executives with a greater comfort factor than gambling

on the unfamiliar. It is not a question of whether the industry takes risks but of whom it lets do so. In some instances this tendency raises questions about hiring practices, particularly for acting jobs, which are often racially designated up front. Most casting calls specifically advertise for "Caucasian" roles (Muñoz 2002). Such a fact raises many other questions about industry business practices.

There is an urgent need for an in-depth study of network television that provides more systematic and detailed information about employment, but that also examines the structure of the industry and its business practices as they relate to people of color. Network television is one of the major industries in the state of California; and people of color account for 53.3 percent of the state population. Both are among the state's most vital resources. Further analysis must begin to examine the impediments and practices that keep them apart.

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RECOMMENDATIONS

An in-depth study of network television must examine the following areas in order gain a more complete understanding of the situation facing people of color:

- Impact of minority images, or lack thereof, on public perceptions and public policy.
- Recruitment and hiring practices at all levels of the television industry
- Impact on minorities of business relationships among networks and production companies, vendors, talent agencies, and the guilds
- Executive decision making, particularly in marketing, sales, production and creative development.

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READY FOR PRIME TIME: MINORITIES ON NETWORK ENTERTAINMENT TELEVISION

Racial minorities remain scarce on prime-time entertainment at the four major broadcast networks. In-depth study is needed of industry hiring practices, business relationships, and programming decisions.

MISSION STATEMENT

The UCLA Chicano Studies Research Center supports interdisciplinary, collaborative, and policy-oriented research on issues critical to the Chicano community. The center's publication unit disseminates books, working papers, and the peer-reviewed *Aztlan: A Journal of Chicano Studies*.

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EXHIBIT 3



RTNDA/F RESEARCH

2002 WOMEN & MINORITIES SURVEY

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Making Diversity Work

KVUE-TV has made a commitment to diversity, in both its hiring practices and its news coverage. Here's how the diverse staff enriches the news product.

By Bob Papper for July-August 2002, *Communicator*

"I don't remember a time when we were lily white," says Judy Maggio about the KVUE-TV newsroom in Austin, TX, and she should know. Austin's top anchor has been there for more than 20 years—through three owners. And gradually, KVUE has come to very closely resemble the demographic makeup of its community. And not by accident. KVUE and its managers have a history of commitment to diversity.

The Austin market is 37.8 percent minority (25.3 percent Hispanic, 7.7 percent African American, 3.3 percent Asian American, 0.6 percent Native American, and 0.9 percent other). The relatively recent loss of three minority staffers (two Hispanics and one Asian) has dropped the KVUE newsroom down from a market-mirroring 36 percent minority to a still impressive 31 percent. Women make up 43 percent of the newsroom.

"You need to have a mix of ideas, backgrounds, cultures. We're in the broadcasting business," says Patti Smith, vice president and general manager of the station. Smith came in when Belo bought the station from Gannett in 1999. "KVUE was diverse when I came over three years ago," says Smith, "and we've added to that."

Both Smith and executive news director Frank Volpicella have the same policy in regard to hiring. "You have to mirror the community in which you live," says Smith. "If not, how do you expect to understand the issues in that community? If you hire without prejudice, then you will have the most diverse staff."

A Diverse History

Morning executive producer Thea Williams says a lot of the station's success with diversity has to do with KVUE's history of having women general managers and "nontraditional" people in positions of power. Williams says those people "have different ideas and different viewpoints in terms of who [else] can be in power."

Several people in the newsroom cite the legacy of KVUE's legendary vice president of news Carole Kneeland. She became news director in 1989 and worked tirelessly to make sure her staff reflected the community. Beyond that, Kneeland insisted the staff understand and cover all the varied segments of the Austin market and that the station have a "rainbow Rolodex." Morning meetings always included discussions about ensuring diversity among the people interviewed for stories. Kneeland died at age 49 in 1998 after an eight-year battle with breast cancer.

"She was my mentor," Maggio says. That legacy has helped keep the staff vigilant, and they make clear that they have no hesitation to speak up if they're at all concerned.

"I remember one meeting," says reporter Kris Gutierrez, "when one of our reporters stood up and said, 'I think we're getting away from [making sure we have diverse soundbites].' That's something I took to heart, and I think others did as well. We need to make a conscious effort that we're not just reporting the news to Miss Betty White."

"If it's a story that requires a medical perspective, it doesn't always have to be an Anglo male doctor," says 5 o'clock anchor Olga Campos, an eight-year veteran of the station.

Ron Oliveira thinks he may have been the first Hispanic main anchor in Austin—starting in 1981. "A nice, bold move for [KVUE] back then," he says. "There were very few Hispanic anchors when I started. Not just here, everywhere."

"Olga and I are making broadcast history here in town," notes Oliveira. "Two Hispanics anchoring a primetime newscast. None of the other stations has ever done that." Campos and Oliveira co-anchor the 5 o'clock newscast. Oliveira and Maggio co-anchor the 6 and 10.

"Both Ron and I are bilingual," says Campos. "When we were ad-libbing on our first day, it was in Spanish. We promised our viewers that the news will be delivered in English. We said that in Spanish. That is a historic moment."

Last Christmas, Gutierrez suggested a story about Christmas tamales. "It's something I grew up with," says Gutierrez. "Every Christmas we have tamales here in Texas. It's a Hispanic tradition. We did this great story of people lining up outside Rosie's Tamale Shop trying to get their hands on these tamales. And one of our African American reporters said, 'You know what? We have a black Santa in town.'"

Two points. First, diversity brings stories and culture into the newsroom that you might not otherwise have. Second, diversity isn't just about checking off boxes on a form. It's about people who are familiar with, have contacts with, and are part of the various communities in the market. The station did both of those stories, and the people at KVUE argue that their news is richer because of the diverse experience of the staff.

An Ongoing Process

While KVUE has one of the most diverse staffs in television news, there are some concerns in the newsroom. Of seven newsroom managers (news director, operations manager, two executive producers, special projects producer, assignment manager and chief photographer), one is a minority, and two are women.

"Sometimes I think the numbers aren't necessarily indicative of the power or the voice that particular groups may have in the newsroom," notes Williams, the one minority manager in the newsroom, although she thinks KVUE probably does a better job at diversity than most other stations.

The people who work at KVUE say they're not shy about making sure that the station maintains the kind of diversity that has been a hallmark.

Reporter Quita Culpepper says she doesn't worry about Belo maintaining diversity because she knows it's a priority at the company. But she also says she wouldn't hesitate to speak up if she thought that diversity was threatened. "Plenty of people feel that way," she says.

"Morally and ethically, it's right to have a newsroom that's diverse and reflects your market," says Volpicella. "With that good intention, it will always equate to good business."

"Everybody brings some personal experiences and opinions to the table every day," says Maggio. And does that make it a more interesting place to work? "You bet," she says.

-Bob Papper is a professor of telecommunications at Ball State University.

Sidebar: The Latest on EEO at the FCC

At the FCC Commissioner's Breakfast at NAB2002, FCC chairman Michael Powell made it clear that he believes the commission can put together EEO guidelines that will pass court review. However, Powell gave no time frame for the implementation of new rules, and as of this writing FCC staff members were unwilling to hazard a guess. Earlier this year, the FCC extended the public comment period on the new guidelines to mid-April and extended the reply period to mid-May.

The latest FCC proposal would require "broad outreach to all qualified job candidates for positions at radio, television and cable companies." It would accomplish that by requiring most stations to send job vacancy announcements to recruitment organizations that request them, and to select from a menu of specific outreach approaches, such as job fairs, internship programs and interaction with educational and community groups.

Small broadcast stations might be exempt from the rules; others would have to explain their recruiting efforts in an annual EEO report in their public file. Stations also would be required to file annual employment reports with the commission, but the information would be used only "to monitor industry

employment trends and prepare reports to Congress."

The latest proposals come in response to the latest D.C. Circuit Court of Appeals decision in 2001 throwing out the FCC's previous changes to the EEO guidelines.

Sidebar: Rainbow Rolodex

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MIXED RESULTS

The 2002 RTNDA/Ball State University Annual Survey shows a drop in minority representation in radio and television newsrooms, particularly among Hispanics. But the survey has good news for women.

Note: Survey results in red have been corrected from the July/August 2002 issue of *Communicator*. The original results were incorrect due to an editing error.

By Bob Papper and Michael Gerhard for July/August 2002 *Communicator*

There are more women news directors than ever, according to the latest figures from the RTNDA/Ball State University Annual Survey. The percentage of minority news directors is also up slightly, even though there's a slight decrease in the percentage of minorities overall.

Women now make up 25.9 percent of TV news directors—that's almost 2 percent higher than the previous record. Minorities make up 9.2 percent of television news directors, up from 8 percent last year.

At 20.6 percent, the TV minority work force slid back from last year's all-time high of 24.6 percent to just above the level from two years ago. Excluding Hispanic stations, the drop is less: from last year's 21.8 percent minority level to this year's 19 percent. Other than last year, that's the highest percentage of minorities at non-Hispanic stations ever recorded.

So why are minority numbers down from last year? There are two possibilities. First, last year's data could simply represent a statistical anomaly. We're always at the mercy of those who return the survey, and last year's sample could have overrepresented the population. Another possibility is that the downturn in the economy has hurt minority numbers: As minority journalists moved up in market size, stations were unable to replace them. That could lead to an overall drop in percentage.

Most of the decrease from last year is among Hispanics. Michael Reyes, member services manager of the National Association of Hispanic Journalists, says the group can't really compare last year's membership figures with this year's, but that there "definitely has not been a drop." He says the numbers have been "consistent if not up slightly."

The other segment taking the biggest hit is the Asian American group. Randall Yip, executive producer at KNTV in San Francisco and vice president of broadcast for the Asian American Journalists Association, says much the same thing—his group has no evidence of a drop in numbers.

Since this year's numbers for both Hispanics and Asian Americans tend to represent historical norms, that suggests that last year's data may well have overstated the percentages.

--Bob Papper and Michael Gerhard, professor and associate professor, respectively, at Ball State University, conducted the research with support from *Communicator* magazine at RTNDA and the Department of Telecommunications at Ball State.

BROADCAST NEWS WORK FORCE

Television

	2002	2001	1994
Caucasian	79.4%	75.4%	82.9%
AfricanAmerican	9.3%	9.9%	10.1%

Hispanic	7.7%	10.1%	4.2%
AsianAmerican	3.1%	4.1%	2.2%
Native American	0.5%	0.6%	0.6%

Radio

	2002	2001	1994
Caucasian	92%	89.3%	85.3%
AfricanAmerican	4.1%	5.2%	5.7%
Hispanic	2.4%	5.5%	7.5%
AsianAmerican	0.8%	<1%	0.6%
Native American	0.7%	<1%	1%

In television, minorities dropped to 20.6 percent-but the numbers are generally in line with historical trends (other than last year's). Without Hispanic stations, the minority percentage fell from last year's 21.8 percent to 19 percent this year. In radio, after a slight uptick last year, minorities continued the general slide that started with the elimination of the EEO guidelines. Note, column totals may not be 100 due to rounding.

BROADCAST NEWS DIRECTORS**Television**

	2002	2001	1994
Caucasian	90.8%	92.0%	92.1%
AfricanAmerican	2%	0.6%	1.6%
Hispanic	5.8%	5.7%	3.8%
AsianAmerican	0.4%	1.1%	1.5%
Native American	1%	0.6%	1%

Radio

	2002	2001	1994
Caucasian	94.9%	95.6%	91.4%
AfricanAmerican	1.9%	1.5%	5.4%
Hispanic	2.6%	2.9%	2.4%
AsianAmerican	0	<1%	0
Native American	0.6	<1%	0.8%

There has been a slight rise in the percentage of minority television news directors, primarily among African Americans. Among non-Hispanic stations, the percentage of minority news directors rose from 5.3 percent to 6.7 percent. Radio has changed little in the past few years.

WOMEN IN LOCAL BROADCAST NEWS**Television**

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	News Staffs With Women	Women News Directors	Percentage of Work Force	Average Number of Women on Staff
All Television	93.6%	25.9%	38.6%	11.3
Network Affiliates	97.4%	20.3%	39.9%	12.2
Independents	93.3%	29.4%	33.8%	9.4
DMA 1-25	100%	28%	38.5%	19.7
DMA 26-50	93.9%	14.3%	38.9%	17.0
DMA 51-100	94.7%	13.3%	37.5%	13.2
DMA 101-150	93.1%	24.6%	40.4%	9.1
DMA 151+	90.6%	23.2%	38.1%	5.9
Staff 51+	100%	15%	38.9%	24.2
Staff 31-50	98.7%	17.7%	39.2%	13.2
Staff 21-30	100%	22.6%	35.5%	8.4
Staff 11-20	100%	35.9%	42.1%	5.9
Staff 1-10	52.6%	4.8%	35.4%	1.4

Radio

	News Staffs With Women	Women News Directors	Women as Percentage of Work Force	Average Number of Women on Staff
All Radio	49.2%	22.3%	32.5%	1.4
Major Market	66.7%	26.1%	42.9%	3.2
Large Market	62.5%	31.0%	37.6%	1.5
Medium Market	50%	22.4%	32%	1.3
Small Market	32.7%	13.3%	19.5%	0.6

The biggest change here is the record number of women news directors—now 25.9 percent. It's possible that the number hasn't really jumped, but that we're just "finding them" for the first time. While most of the numbers are projected from the smaller sample of returned surveys, the overall number is an actual census count. If we used projected numbers based on survey returns, we'd report that 20.4 percent of TV news directors are women. The upshot here is that for some reason women news directors were less likely to fill out the annual survey than men. In radio, there were no dramatic changes from last year. The percentage of staffs with women increased a little (from 46.4 percent), and women news directors remained steady, but the percentage of women in the radio work force dipped from last year's record high of 37.4 percent. Major markets are those with 1 million or more listeners. Large markets are from 250,000 to 1 million. Medium markets are 50,000 to 250,000. Small markets are fewer than 50,000.

MINORITIES IN LOCAL BROADCAST NEWS

Television

	News Staffs With Minorities	Minority News Directors	Minorities as Percentage of Work Force	Average Number of Minorities on Staff
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All Television	83.1%	9.2%	20.6%	5.2%
Network Affiliates	86.9%	4.1%	16.3%	5.1
Independents	73.3%	33.4%	41%	11.5
DMA 1-25	95%	8.7%	30.2%	16.1
DMA 26-50	87.9%	8.6%	18.7%	8.2
DMA 51-100	96.4%	5.2%	15.7%	5.4
DMA 101-150	78.6%	6.9%	13.6%	3.1
DMA 151+	66%	7.4%	13.2%	2.1
Staff 51+	100%	10.5%	22%	13.9
Staff 31-50	94.7%	5.3%	17.3%	5.7
Staff 21-30	92%	5.8%	14.8%	3.1
Staff 11-20	65.8%	8.6%	16.9%	2.4
Staff 1-10	35%	5%	5.1%	0.8

Radio

	News Staffs With Minorities	Minority News Directors	Minority as Percentage of Work Force	Average Number of Minorities on Staff
All Radio	19.8%	5.1%	8.0%	0.4
Major Market	43.5%	8.6%	13.1%	1.2
Large Market	32.1%	14.3%	11.2%	0.5
Medium Market	10.2%	3.6%	3.2%	0.1
Small Market	11.4%	0	5.7%	0.2

The percentage of TV news staffs with minorities slipped slightly from last year's 86 percent, but the average number of minorities remained the same at 5.2. While there were not strong geographic differences in whether a television station was likely to have minorities on staff, stations in the South and West were far more likely to have minority news directors and a higher percentage of minorities on staff than stations in the Northeast or Midwest. Radio results are mixed; the percentage of staffs with minorities rose from last year's 15.5 percent, but the minority work force dropped from last year's 10.7 percent. Minority radio news directors edged up from last year's 4.4 percent.

GENERAL MANAGERS

Television

	Percent Caucasian	Percent Minority	Percent Men	Percent Women
All Television	94.8%	5.2%	87.0%	13.0%
Network Affiliates	97.5%	2.5%	87.4%	12.6%
Independents	72.2%	27.8%	77.8%	22.2%

DMA 1-25	91.7%	8.3%	92.0%	8%
DMA 26-50	94.1%	5.9%	88.6%	11.4%
DMA 51-100	91.7%	8.3%	82%	18%
DMA 101-150	96.7%	3.3%	90.3%	9.7%
DMA 151+	98%	2.0%	85.5%	14.5%
All Radio	96.2%	3.8%	89%	11%

The percentage of men and women general managers in television is virtually unchanged from a year ago, although women slipped slightly among network affiliates and rose substantially among independents. Minority TV GMs have dropped from 10 percent two years ago to 8.7 percent last year to 5.2 percent this time around, and minority GMs at network affiliates have dropped by more than half from last year (5.5 percent). In radio, there's little change in the percentage of women GMs from the last two years, but minority GMs dropped from last year's 5.7 percent to this year's 3.8 percent. Note that the figures for GMs include only those stations with news departments; those without news departments are not included in this survey.

NEWSPAPER VS. BROADCAST NEWSROOMS

	Daily Newspapers	TV Newsrooms	English Language TV Newsrooms
Minorities Overall	12.07%	20.6%	19%
African Americans	5.29%	9.3%	9.5%
Hispanics	3.86%	7.7%	5.8%
Asian Americans	2.36%	3.1%	3.2%
Native Americans	0.56%	0.5%	0.5%
Women	37.05%	38.6%	
Minority Supervisors	9.7%	9.2%	

The newspaper statistics come from the American Society of Newspaper Editors. Supervisors include the news director, assistant news director, managing editor and executive producer. The 9.2 percent minority supervisors represents the lowest number since we began collecting this data in 1996.

TV POSITIONS BY GENDER AND RACE

	Male	Female	White	Minority	African American	Hispanic Latino	Asian American	Native American
News Director	74.1%	25.9%	90.8%	9.2%	2.0%	5.8%	0.4%	1%
Asst. News Director	67.4%	32.6%	87.4%	12.6%	6.2%	3.8%	0	2.6%
Executive Producer	50.4%	49.6%	89.4%	10.6%	7.4%	2.4%	0	0.8%
Managing Editor	70.3%	29.7%	86.9%	13.1%	7.4%	1.9%	3.8%	0
Assignment Editor	59.6%	40.4%	78.2%	21.8%	13.2%	6.1%	2.5%	0
News Producer	35.7%	64.3%	85%	15%	7.9%	5.0%	1.9%	0.2
News Anchor	43%	57%	79.1%	20.9%	12.0%	5.0%	3.6%	0.3%

Weathercaster	80.5%	19.5%	90.9%	9.1%	3.1%	5.0%	1%	0
Sports Anchor	92.6%	7.4%	89.4%	10.6%	6.0%	3.8%	0.8%	0
News Reporter	41.7%	58.3%	73.8%	26.2%	12.3%	7.9%	5.4%	0.6%
Sports Reporter	91.9%	8.1%	89.9%	10.1%	6.1%	4%	0	0
News Writer	33%	67%	64.7%	35.3%	14.8%	10.2%	10.3%	0
Photographer	92.7%	7.3%	82.7%	17.3%	9.1%	6.7%	1.1%	0.4%
Tape Editor	68.5%	31.5%	74.9%	25.1%	13.4%	10.2	1.5%	0
Graphics Specialist	68%	32%	78.6%	21.4%	8%	6.7%	6.7%	0
Internet Specialist	63.3%	36.7%	93.9%	6.1%	2%	4.1%	0	0
News Assistant	36.1%	63.9%	77%	23%	12.5%	7.9%	2.6%	0

We see relatively few trends developing as we look at specific newsroom positions. We collect these data every three years, and this marks the third time. Three years ago, it looked like both women and minorities were making headway in many of the higher-end positions. This year's numbers tend to split the difference between 1996 and 1999; women continue to be more likely than men to be news anchors, and that will probably continue as women reporters continue to outpace men. On the other side, women made no gains in weather, although minority weathercasters rose slightly. In sports-both sports anchor and sports reporter- neither women nor minorities have advanced at all. And photographers, if anything, are slightly more likely to be white and male.

[Click here for 2001 Women & Minorities Survey results](#)

[Click here for 2000 Women & Minorities Survey results](#)

About the Survey

The RTNDA/Ball State University Annual Survey was conducted in Q4 2001 among all 1,396 operating, non-satellite television stations and a random sample of 1,505 radio stations. Valid responses came from 818 television stations (58.6 percent) and 249 radio news directors and general managers representing 622 radio stations.

EXHIBIT 4

STATEMENT OF EDUARDO PENA

I, Eduardo Peña, respectfully state as follows:

I am the communications counsel for the League of United Latin American Citizens (LULAC). Previously, I served as the National President of LULAC and, before that, as Director of Compliance for the EEOC for ten years. I have practiced civil rights law for nearly four decades, and I formerly was a part owner of a television station that was affiliated with the ABC and later the Telemundo network. Over the past twenty years, I have participated in many FCC adjudicative and rulemaking proceedings. In 1993, I was a partner in the Silver Spring, Maryland firm Alexander, Gebhardt, Aponte and Marks.

With the authorization of and on behalf of LULAC, I am responding to Texas Association of Broadcasters (TAB) Executive Director Ann Arnold's suggestion, in her June 24, 2002 testimony at the FCC's en banc EEO hearing, that there was some irregularity in LULAC's challenge to various Texas television stations' license renewals in 1993. The allegation that LULAC would ever be involved in some kind of oppressive behavior is disappointing, insulting and absolutely wrong.

LULAC is keenly aware of the importance of television in focusing public attention on issues facing minority groups, as the Kerner Report documented and explained in 1968. National television coverage of the African American civil rights struggle in the south contributed profoundly to the success of the movement; yet the failure of southern television stations to discuss civil rights on the air did much to delay African Americans' attainment of the most elementary attributes of citizenship. Likewise, in Texas in 1993, the near-absence of Hispanics in broadcast journalism and public affairs staffs presented an impediment to having our issues addressed on the air. At LULAC's national conventions in the early 1990s, speakers and panelists complained bitterly that there were few people inside the television stations who were familiar with our issues, or who knew the people who were driving those issues. Thus, news directors and assignment editors tended to cover other matters with which they were already familiar or with which they could empathize.

For years, we had heard too many accounts from well qualified Hispanics that they could not secure employment at the Anglo stations. Few complaints were filed, since by filing such a complaint against an employer in a close-knit industry a person often throws his career out the window by becoming labeled a "troublemaker."

LULAC was fed up with this, and it decided to do something about it.

LULAC also recognized that while the FCC had had EEO rules since 1969, its enforcement staff relied almost entirely on complaints from members of the public to alert the Commission to problems with particular licensees. Thus, LULAC felt it was our duty to report EEO violations to the Commission.

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LULAC is not a stranger to the Texas Association of Broadcasters (TAB). We are their neighbors -- indeed, we long predated their existence. LULAC was founded in Texas in 1929, around the time when television was invented and five years before the FCC was created. Some LULAC members are broadcasters in Texas. In 1993, any broadcaster could have called our national headquarters, or our local representatives, to reach out to us or to share their concerns with anything we did.

LULAC is not some obscure "concerned citizens" group created to challenge a license and seldom lasting longer than the FCC's ruling. It is as conservative and mainstream as an organization created to defend the civil rights of Americans can be. When LULAC brings EEO litigation before the FCC, its road map is the same as that followed by the Office of Communication of the United Church of Christ and by the NAACP. In particular:

- we target only apparent "bad actors", irrespective of irrelevant factors like the parent company's size or a pending sale of the company;
- we seek nothing for LULAC itself;
- we never seek to oppress or embarrass our opponents; and
- in the event of a settlement, we always put all the terms in writing and document any reimbursable expenses carefully according to FCC standards.

LULAC has operated for eight decades under the highest standards of ethics. In Texas and throughout the United States, we have won renown for our diligent and aggressive battles against discrimination and for equal opportunity. In Texas, LULAC lawsuits brought about the desegregation of the "Mexican Schools," the elimination of the Poll Tax and the participation of Mexican Americans on juries. In California and Texas, LULAC lawsuits ended the prevalent practice of assigning Hispanic students into classes for the retarded. More recently, LULAC lawsuits against the State of Texas compelled the University system and the Texas Highway Commission to correct their longstanding practices of neglecting the educational and economic development needs of South Texas and the counties along the border, where almost half of the Hispanics in Texas reside.

Not all of LULAC's effort to improve the quality of life in Texas are achieved through litigation. LULAC councils throughout the state help to feed the hungry, and to clothe and shelter the poor. We work tirelessly to improve the educational system in the state. LULAC programs help students stay in school, graduate from high school and continue into college and graduate school. Since 1929, one of the principal efforts of LULAC councils has been to provide encouragement and support through the most extensive scholarship program available to Hispanic students in Texas.

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Surely the Texas Association of Broadcasters knew something about these and many other efforts by LULAC members to help make Texas a better place to live. Our efforts in the broadcasting industry, which influences so much in our society, are no less important.

Understandably, the targets of LULAC's battles are not always enamored of everything LULAC does. No one wants to be the subject of a civil rights action, even if such an action is well deserved.

As a group, Texas broadcasters' record of Hispanic employment is so weak that only the presence of systemic discrimination explains it. In 1992, FCC Form 395 data disclosed that there were 4,525 full time high pay (management, sales, professional and engineering) employees of Texas television stations, of whom 781 (17.3%) were Hispanic. However, when the Spanish language stations were omitted, these numbers become rather shocking: 513 out of 4,150 (12.4%) were Hispanic. In the 1990 Census, 25.5% of the Texas population was Hispanic. LULAC recognized that this wide a disparity could not be explained except as the fruit of intentional discrimination.

With 117 television stations in the state in 1993, our due diligence effort had to be very comprehensive. In preparing for litigation, we had two objectives: first, do not put EEO compliers through the travails of litigation; second, do not allow EEO noncompliers to escape accountability.

Thus, we reviewed the EEO performance and EEO programs of every television station in the state -- an enormous, tedious and very time-consuming task. Local LULAC councils, whose officers are volunteers, possessed years of collective knowledge of the stations' operations. They often heard from Hispanics who worked in the media and knew who was, and who was not, providing equal opportunity. In our due diligence, we usually found Form 395 data to be useful in mitigation, while the stations' 1988 and 1993 EEO programs (Form 396) often provided evidence in corroboration. In at least two instances, however, the Form 395 data was so extreme that it tended to support inferences of intentional discrimination that we had drawn from other evidence we possessed.

As a former Director of Compliance of the EEOC and a civil rights lawyer throughout my professional life, I can affirm that this is what happens normally in planning for EEO litigation.

As a result of our initial due diligence, we divided the television stations in Texas into four categories:

- (1) those that we knew were nondiscriminators and EEO compliers
- (2) those for which we could not form an opinion as to whether they were nondiscriminators and EEO compliers

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Page Four.

- (3) those we believed to be neglectful of their EEO compliance obligations, although we did not believe them to be intentional discriminators
- (4) those we believed were deliberate EEO noncompliers and, in most cases, deliberate discriminators.

These four categories are normal for civil rights litigation. As I noted above, LULAC did not focus on the parent company's size, whether the station was likely to be sold, or any other irrelevant factors. Instead, LULAC and other mainstream civil rights organizations focus only on stations that appear to be EEO noncompliers, to the exclusion of extraneous matters.

Of the 117 television stations in Texas in 1993, 98 were in category (1) or (2); that is, there were no grounds or insufficient grounds to question their FCC EEO bonafides.

Another three stations were in category (3). We did not challenge these stations' renewal applications. Instead, we wrote each of them a letter stating that they had been excluded from the petition to deny, but encouraging them to be more attentive to their EEO responsibilities. We did not ask them to do anything more than that.

Sixteen of the stations were in category (4), and we challenged the renewal applications of each of them. These stations were 13.7% of the 117 television stations in Texas. The stations were located in the following markets: College Station, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Lubbock, San Angelo, San Antonio, Sweetwater and Wichita Falls.

Much has been made of the role of Form 395 data in petitions to deny. As noted earlier, in at least two instances, the Form 395 statistics were so extreme that they added to inferences of discrimination we had derived from other evidence. However, the 1993 percentages of minorities among the top four category employees of the stations subject to our petition to deny ranged from 0% to 46%, with a median of 26%. These statistics -- which may surprise those who think citizen groups file petitions to deny by just counting heads -- reflects the fact that of all of the factors entering into an evaluation of whether discrimination may have occurred, overall employment statistics are only of secondary value.

The Petition was 35 pages in length, not counting exhibits.

We were careful not to "overplead." For example, we noted in the petition that one of the stations did not seem to be discriminating, but seemed instead to be operating outside the EEO rule through inattentiveness and neglect. Thus, as to that station, we sought only reporting conditions rather than a hearing, because reporting conditions seemed commensurate with the scale of its offense. (Later, when we found a database error in our petition, we withdrew it voluntarily as to that station.)

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The FCC's staff, finding that a prima facie case of discrimination had been made out, conducted investigations of the allegations raised against six of the stations.

The dispositions of the stations' applications were as follows:

- Two cases were resolved with admonishments.
- Five cases were settled; these settlements were each approved by the FCC, and sanctions were not imposed.
- One case was settled, with Commission approval, but the Commission also imposed a conditional renewal and a forfeiture.
- One rather dramatic case resulted in a short term conditional renewal with a forfeiture.
- Six cases resulted in unconditional renewals.
- As noted above, one case was withdrawn by LULAC on its own motion.

These outcomes are normal for civil rights litigation. By comparison, the EEOC recently announced that 27% of private plaintiffs' workplace bias suits resulted in a recovery. See EEOC Litigation Report, 1997-2001 (August 13, 2002). As shown above, four out of 16 (25%) of the cases we brought resulted in FCC findings that the licensees' EEO performance had fallen short of what was expected.

Like almost every nonprofit organization, LULAC is open to settlement except in extreme cases. Sometimes, the parties' objectives can be achieved more efficiently through settlement than through continued litigation. A rule of thumb is that roughly 95% of all civil litigation eventually settles. At the FCC, only about 30% of EEO litigation settles. As shown above, of the 16 cases we brought in 1993 in Texas, six (38%) settled.

When we entered into settlement discussions, we did not propose anything the FCC had never before approved or was unlikely to approve. Nor, obviously, did we threaten any licensee with retribution if it did not reach agreement with us.

In approving these and all other settlements of EEO litigation, the Commission evaluates the merits of the allegations, as it must do under Section 309(d)(2) of the Communications Act. In all cases, the licensees were represented by experienced FCC counsel, and these lawyers did not hesitate to call me or my co-counsel, David Honig, if they had any questions or wanted to discuss settlement.

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The settlements, when they occurred, sometimes were the product of LULAC's approaching the licensee, and sometimes were the product of the licensee approaching LULAC. As typically happens in any kind of litigation, these discussions occurred at "decision points" -- i.e., when a pleading cycle ended, or when the Bureau had just issued a decision. In two instances, settlement discussions did not result in settlement, but at no time did opposing counsel (who we knew very well) ever advise us that our settlement proposals were inappropriate.

When a licensee sought settlement discussions, or agreed with us that settlement would be appropriate, the first step was for us to send a settlement proposal to the licensee's counsel upon his request for one. Our starting point was a draft form I helped develop that amplified on FCC Form 396 while also including elements of EEO consent decrees commonly used by the EEOC and by litigants in EEOC matters for decades. Due to often intense negotiations, this form typically went through numerous revisions, iterations, and adjustments to fit the particular circumstances of each case and the needs and abilities of each licensee. The settlements we reached typically included substantive commitments which provided that the station would, e.g.,

- notify local LULAC representatives and other organizations whenever job vacancies occur, and such vacancies are not to be filled through promotion from within;
- operate a student internship program at the station, exposing students to various substantive areas of competency, such as sales, research, programming, production and promotion; and
- meet regularly with local LULAC representatives for nonbinding dialogue concerning recruitment sources, training, internship opportunities, staff diversity (particularly in news), means by which Hispanic organizations in the station's service area might participate in the station's programming, and opportunities for Hispanic businesses to provide goods and services to the station.

These provisions are consistent with sound EEO practice and LULAC regards them as serving the public interest. The Commission has never hesitated to approve voluntary agreements with these kinds of provisions.

Ms. Arnold alleges in her June 24, 2002 en banc hearing testimony that what was being sought, apparently by LULAC, was "thousands of dollars for preparation of 'minority recruitment plans' for their station in exchange for dropping protests of their license renewals." As shown below, that allegation is not true.

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Page Seven.

Ms. Arnold may not have meant to imply that this money would go to LULAC itself; actually, LULAC never sought nor received a penny for itself. Under the FCC's anti-greenmail rules, LULAC could have, and only did, seek a portion of the value of its documented legal expenses. Those expenses had to be reviewed and approved by the FCC's staff before any compensation could be made.

The preparation of a "minority recruitment plan" was an essential element of any settlement, obviously. But drafting this straightforward document and negotiating its terms with opposing counsel (often requiring three or four iterations) hardly represented all (or even a majority) of the legal work done on LULAC's behalf in the litigation. Under Office of Communication of the United Church of Christ v. FCC, 465 F.2d 519 (D.C. Cir. 1972) and Agreements between Broadcast Licensees and the Public, 58 FCC2d 1129 (1975), LULAC was permitted to seek reimbursement of a portion of its fees and costs in the entire case -- including due diligence and pleadings.

All settlement terms were always reduced to writing and submitted to the Commission for its approval. There were absolutely no side deals nor requests for same. Each case that was settled was submitted for Commission review through a joint petition for approval signed by both sides' counsel, and each case involving a fee reimbursement was supported by a detailed declaration of counsel, using the guidelines developed by (retired) FCC EEO Branch Chief Glenn Wolfe over twenty years ago.

Most critically, the FCC approved each settlement without modifications and without requesting additional documentation. The total amount of reimbursable fees would not pay a half-year's salary for a single broadcast manager. This kind of litigation is hardly a profit center for a law firm, which helps explain why so few lawyers bother with it.

Respectfully, if the purpose of a petition to deny is to call material facts to the Commission's attention, we fulfilled that purpose reasonably well. The facts we called to the Commission's attention are the kind of facts any agency with civil rights enforcement authority would want to know.

Finally, Ms. Arnold alleges in her en banc hearing testimony that broadcasters "tell me and sometimes they even tell white male applicants that they cannot hire anyone but a minority." Although I have come across many peculiar utterances in my years as an EEOC official and a civil rights lawyer, the possibility that more than one or two broadcasters ever said out loud so outrageous a thing as "I cannot hire anyone but a minority" seems implausible to me. A television station is almost always represented by experienced communications counsel and local counsel. These lawyers would have advised their clients that the station's FCC license would be on the line if a broadcast manager openly proclaimed that his station engaged in race discrimination.

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As a former partner in a television station licensee, I know, and I'm sure every television station owner knows, that the FCC does not tolerate "reverse discrimination." On the other hand, discrimination against minorities and women, done covertly, happens far more frequently than most Americans would like to acknowledge.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge.



Eduardo Peña
Peña & Associates
1730 Rhode Island Ave. N.W.
Suite 1208
Washington, D.C. 20036

Dated: _____

9/27/02